Supreme Court, U.S.
FILED
APR 13 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1551

In The
Supreme Court of the United States
October Term, 1986

ALAN J. KARCHER, as Speaker of the New Jersey General Assembly, *et al.*,

Appellants,

v.

JEFFREY MAY, individually, *et al.*,

Appellees.

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED MARCH 19, 1986

JURISDICTION POSTPONED JANUARY 27, 1987

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or call collect (402) 342-2831

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Feb. 17, 1984—Appellants' notice of appeal filed.

May 22, 1984—Appellants' brief and appendix filed.

June 21, 1984—Appellees' brief filed.

July 9, 1984—Appellants' reply brief filed.

Oct. 25, 1984—Oral argument on merits heard.

Nov. 7, 1984—Letter from the Clerk of the Court advising counsel that the court will stay disposition of matter pending disposition of *Wallace v. Jaffree* and *Smith v. Jaffree* cases in the United States Supreme Court.

June 5, 1985—Letter from the Clerk of the Court to counsel directing submission of letter briefs pertaining to United States Supreme Court's decision in *Wallace v. Jaffree* and *Smith v. Jaffree.*

June 20, 1985—Submission of letter brief by appellants.

July 1, 1985—Submission of letter brief by appellees.

Aug. 13, 1985—Re-Argument on merits heard.

Aug. 19, 1985—Submission of letter by appellants pertaining to trial record support of secular purpose.

Aug. 29, 1985—Submission of letter by appellees in response to appellants' letter of August 19, 1985.

Dec. 24, 1985—Opinion of the United States Court of Appeals for the Third Circuit filed (Nos. 83-5890 and 84-5126).

Dec. 24, 1985—Judgment of the United States Court of Appeals for the Third Circuit filed (Nos. 83-5890 and 84-5126).

Jan. 15, 1986—Letter from the Clerk of the Court to counsel releasing the certified list in lieu of the record.

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY
DOCKET ENTRY SHEET

Civil Action No. 83-0089

PLAINTIFFS	DEFENDANTS
JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually; BONNIE SCHORSKE, as natural parent of MARK SCHORSKE, an infant, and BONNIE SCHORSKE, individually; BRENDA BUTLER, as natural parent of CARY BUTLER, an infant, and BRENDA BUTLER, individually; GARY DREW, individually	DR. SAUL COPPERMAN, Commissioner of the Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; EDISON TOWNSHIP BOARD OF EDUCATION; OLD BRIDGE TOWNSHIP BOARD OF EDUCATION (defendant-intervenors) Alan J. Karcher as Speaker of the New Jersey General Assembly; the New Jersey General Assembly; Carmen A. Orechio as President of the New Jersey Senate and the New Jersey Senate New Jersey Council of Churches (Amicus Curiae) New Jersey Education Association (Amicus Curiae)

CAUSE

Civil Rights-moment of silence New Jersey School System (P.L. 1982, Ch. 205). JJF

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J.S. 6 11-15-

DATE	FILING FEES PAID RECEIPT NUMBER	
1-10-83	54004 ($60.00)	C.D. Number / Card
12-14-83	062639 $70.00	Statistical Cards / Date Mailed

DATE	NR.	PROCEEDINGS Judge Debevoise — Civil 83-89
1-10-83	1	Complaint filed.
1-10-83	2	Notice of Allocation and Assignment filed (Trenton-Debevoise)
1-10-83	3	Plaintiff Motion for Tempory Restraining Order, filed.
1-10-83	4	Statement by plaintiff re: nonisuance of summons filed.
1-10-83	5	Verification of Jeffrey May filed.
1-10-83	6	Order to show cause why a preliminary and permanent injunction should not be issued on 1-18-83 at 9:00 A.M. with temporary restraints and directing defendants to answer complaint within 20 days of serv. filed. (Debevoise) (copies mailed)
1-12-83		Hearing on plaintiffs' application for temporary injunction. Ordered application granted. Ordered that defendants show cause on 1-18-83 at 9:00 A.M. why a preliminary and permanent injunction should not be issued. (Debevoise) (1-10-83)
1-14-83	7	Order directing defendant Cooperman to notify school districts of State of New Jersey and direct them to cease enforcement of P.L. 1982, Ch. 205 pending hearing for preliminary injunction filed. (Debevoise) (copies mailed)
1-17-83	8	Order Re-allocating case from Trenton to Newark filed. (Debevoise) (Notice Mailed)
1-18-83	9	Order permitting Alan J. Karcher as Speaker of the New Jersey General Assembly; New Jersey General Assembly; and Carmen A. Orechio as President of New Jersey Senate and New Jersey Senate to intervene as party defendants filed. (Debevoise) (copies mailed)
1-18-83	10	Consent order extending temporary restraints pending hearing on prel. injunction filed. (Debevoise) (copies mailed)

DATE	NR.	PROCEEDINGS
		Judge Debevoise Civil 83-89
1-18-83	11	Consent order re: discovery; directing that all discovery be completed 2-15-83 and scheduling hearing on preliminary and permanent injun. for 2-23-83 filed. (Debevoise) (copies mailed)
1-21-83		Hearing on plaintiff's application re: requesting that temporary res. contained in court's order of 1-10-83 remain in effect until final hearing for preliminary injunction (Debevoise) (1-18-83)
1-21-83		Hearing on application of Alan J. Karcher and Carmen A. Orechio to intervene. Ordered application granted. (Debevoise) (1-18-83)
1-25-83	12	Transcript of hearing held on 1-18-83, filed 1-24-83.
1-25-83	13	Transcript of hearing taken on 1-10-83, filed 1-24-83. (re: Order to Cause)
2- 2-83	14	Notice of motion and motion of New Jersey Council of Churches for permission to appear, file a brief and make oral argument as amicus curiae in action returnable 2-14-83; statement in lieu of brief and proof of mailing, filed 1-27-83.
2-14-83	15	Notice of motion of the N.J. Education Association, for leave to intervene as Amicus Curiae, returnable 2-28-83, and proof of mailing, filed. (Statement in lieu of Brief)
2-18-83	16	Order granting the N.J. Council of Churches leave to intervene as amicus curiae, filed 2-15-83. (Debevoise) Notice Mailed.
2-23-83	17	Order re discovery; scheduling a status conference for 3-14-83, and adjourning hearing date on preliminary and permanent injunction, etc., filed 2-18-83. (Debevoise) Notice Mailed.

DATE	NR.	PROCEEDINGS Judge Debevoise — Civil 83-89
2-24-83	18	Notice of Motion of defendants Alan J. Karcher and Carmen A. Orechio, for an order suppressing or limiting plaintiffs' right to propound interrogatories or take certain depositions, returnable 3-14-83, and certificate of mailing, filed 2-22-83. (Brief submitted)
2-25-83	19	Notice of Appearance of counsel for defendants Alan J. Karcher and Carmen A. Orechio, filed 2-24-83.
2-28-83	20	*Answer* of Alan J. Karcher, Carmen A. Orechio and the N.J. State Senate, and proof of mailing, filed 2-23-83.
3- 1-83	21	*Answer* of defendants Saul Cooperman, Commissioner of Education and N.J. Department of Education, filed 2-28-83.
3- 1-83	22	Affidavit of service of answer of defendants Saul Cooperman, Commissioner of Education and N.J. Department of Education, filed 2-28-83.
3- 1-83		At call for hearing on motion of the N.J. Education Assoc. for leave to intervene as Amicus Curiae, Court indicated a consent order to be submitted. (Debevoise) (2-28-83)
3- 1-83	23	Order granting the N.J. Education Assoc. leave to intervene as amicus curiae, filed 2-28-83. (Debevoise) (2-28-83)
3- 3-83	24	Notice of motion of the American Jewish Congress for leave to intervene as amicus curiae, returnable 3-14-83, statement in lieu of brief and proof of mailing, filed 3-7-83.
3- 3-83	25	Affidavit of Kenneth S. Goldrich, filed 3-7-83.
3-10-83	26	*Answer,* of defendant Old Bridge Township, filed.

DATE	NR.	PROCEEDINGS Judge Debevoise Civil 83-89 Civil Docket Continuation Sheet
3-10-83	27	Affidavit of Steven J. Tripp, filed.
3-10-83	28	Affidavit of service of consent order extending time to answer, answer and affidavit of Steven J. Tripp, filed.
3-14-83	29	Notice of motion of American Jewish Committee, the Anti-Defamation League of B'nai B'rith, the Essex County Board of Rabbis, the New Jersey Association of Reform Rabbis, the Union of American Hebrew Congregations (New Jersey-West Hudson Valley Council) and the United Synagogues of New Jersey for leave to appear as amicus curiae returnable 3-14-83 and certificate of service, filed 3-11-83. (Statement in lieu of brief)
3-14-83	30	Certification of Rabbi Peter E. Kasdan, filed 3-11-83.
3-15-83	31	Consent Order extending time for defendant Old Bridge Township Board of Education to answer the complaint to 3-31-83, filed 3-14-83. (Debevoise) Notice Mailed.
3-16-83		Hearing on motion of defendants Alan J. Karcher and Carmen A. Orechio for an order suppressing or limiting plaintiffs right to propound interrogatories or take certain depositions. Ordered motion granted in part and denied in part. Order to be submitted. (Debevoise) (3-14-83)
3-16-83		Hearing on motion of the American Jewish Congress for leave to intervene as amicus curiae. Ordered motion granted. Order to be submitted. (Debevoise) (3-14-83)
4- 7-83	32	Order granting motion of the American Jewish Committe, the Anti-Defamation League of B'nai B'rith, the Essex County Board of Rabbis, the New Jersey Association of Reform Rabbis, the Union of America Hebrew Congregations and the United Synagogues of

DATE	NR.	PROCEEDINGS Judge Debevoise Civil 83-89
		N.J. for leave to appear as amicus curiae, filed 3-15-83. (Debevoise) Notice mailed.
4- 8-83	33	*Transcript* of hearing on motion taken 3-14-83, filed 3-16-83.
4- 8-83	34	Notice of motion of defts. Cooperman and N.J. Department of Education to quash notice to take deposition scheduled for 4-15-83, for protective order, ret. 5-23-83, filed 4-7-83. (Brief submitted)
4- 8-83	35	Affidavit of Robert Swissler in support of motion to quash and for protective order, filed 4-7-83.
4- 8-83	36	Affidavit of Saul Cooperman in support of motion for protective order, filed 4-7-83.
4- 8-83	37	Affidavit of service of brief, notice of motion to quash, affidavit of Cooperman and Swissler, and order, filed 4-7-83.
4-20-83	38	Notice of Motion of plaintiffs for an order granting motion *in limine* seeking to admit into evidence copies of news articles as appended hereto reflecting public perception of the N.J. Minute of Silence Act and statements made by various legis. concerning that Act, ret. 4-20-83 and affidavit of service. (Brief submitted)
4-22-83		Hearing on in limine motion of plaintiff for an order permitting admission of certain newspaper articles. Ordered motion granted. Order to be submitted. (Debevoise) (4-20-83)
4-22-83		Hearing on motion of defendants for certification of decision for appeal. Ordered motion denied. (Debevoise) (4-20-83)
4-25-83	39	*Transcript* of hearing on motions taken 4-20-83, filed 4-22-83.
4-28-83	40	Order granting the American Jewish Congress leave to intervene as amicus curiae and leave to file a brief and make oral argument, filed 4-26-83. (Debevoise) Notice Mailed.

DATE	NR.	PROCEEDINGS Judge Debevoise Civil 83-89
5-25-83		At call for hearing on motion of defendants Cooperman & N.J. Dept. of Education to quash notice to take deposition and for protective order, Court indicated motion withdrawn. (Debevoise) (5-23-83)
8-19-83	41	Affidavit of Jack Kanthal, filed 8-18-83.
8-19-83	42	Affidavit of Edward F. Lamb, filed 8-18-83.
8-19-83	43	Notice of motion of the Associated Press to Quash subpoena, returnable 9-7-83, and affidavit of service, filed 8-18-83. (Brief Submitted)
9- 7-83	44	Order quashing subpoenas served upon the Associated Press, filed. (Debevoise) Notice mailed.
9-13-83		Hearing on motion of Associated Press to quash certain subpoenas. Ordered motion granted. (Debevoise) (9-7-83)
9-13-83		*Trial without a jury moved* before Hon. Dickinson R. Debevoise. (9- Trial adjourned to 9-14-83.
9-14-83		Trial without a jury continued. (Debevoise) (9-14-83) Trial adjourned to 9-15-83.
9-15-83		Trial without jury continued. (Debevoise) (9-15-83) Trial adjourned to 9-16-83.
9-16-83		Trial without jury continued. (Debevoise) (9-16-83) DECISION RESERVED.
9-28-83	45	*Transcripts* of trial held on 9-15-83 and 9-16-83, filed. (Volumes 3 and 4)
10-24-83	46	Opinion filed. (judgment for plaintiffs; no costs allowed to any party)
11-15-83	47	Judgment granted for plaintiffs, without costs filed 11-10-83. (Debevoise) Notice Mailed.
12- 2-83	48	Notice of motion of plaintiffs for order setting aside in part Court's opinion filed 10-24-83 and modifying judgment filed 11-10-83, returnable 12-27-83, filed 11-28-83. (brief submitted)

DATE	NR.	PROCEEDINGS Judge Debevoise — Civil 83-89
12- 6-83	49	Proof of service of copy of notice of motion to reconsider and memorandum of law, filed 12-5-83.
12-14-83	50	Notice of appeal of defendants, Alan J. Karcher, New Jersey General Assembly, Carmen A. Orechio and New Jersey Senate filed 12-9-83 at 8:30 A.M. USCA 83-5890
12-14-83		Copies of notice of appeal sent to USCA and Pellettieri, Rabstein and Altman, Alfred E. Ramey, Jr., D.A.G., Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney, Wilentz, Goldman & Spitzer, R. Joseph Ferenczi, Esq.
12-15-83	51	Notice of motion of defendants, Alan J. Karcher, New Jersey General Assembly, Carmen A. Orechio and New Jersey Senate for extension of time to file notice of appeal, returnable 1-9-84 and proof of service filed 12-13-83.
1- 3-84	52	Certification of Valarie Karaska filed 12-29-83.
1-11-84		Hearing on motion of plaintiffs for order setting aside in part Court's opinion filed 10-24-83 and modifying judgment filed 11-10-83. Ordered motion setting aside Court's opinion denied. Ordered motion for modification granted as to intervenors. Order to be submitted. (Debevoise) (1-9-84)
1-11-84		Hearing on motion of defendants, Alan J. Karcher, New Jersey General Assembly, Carmen A. Orechio and New Jersey Senate for extension of time to file notice of appeal. Ordered motion denied. (Debevoise) (1-9-84)
1-23-84	53	Affidavit of Anne P. McHugh in support of plaintiffs' application for attorneys' fees and costs filed 1-20-84.
1-23-84	54	Affidavit of Norman I. Cantor for services filed 1-20-84.

DATE	NR.	PROCEEDINGS Judge Debevoise Civil 83-89
1-23-84	55	Affidavit of Jeffrey E. Fogel for services filed 1-20-84.
1-23-84	56	Affidavit of Deborah H. Karpatkin for services filed 1-20-84.
1-23-84	57	Affidavit of Jack D. Novik filed 1-20-84.
1-23-84	58	Affidavit of service of copy of affidavit of Anne P. McHugh, et al. filed 1-20-84.
1-25-84	59	Copy of transcript purchase order re: transcript already on file 1-23-84.
1-25-84	√	RECORD COMPLETE FOR PURPOSE OF APPEAL.
1-30-84	60	Opinion filed 1-25-84. (Debevoise) (attorney fees for plaintiffs)
1-30-84	61	Order amending order filed 11-10-83 by awarding plaintiffs counsel fees and costs against defendant intervenors only, Alan J. Karcher, as Speaker of N.J. General Assembly, the N.J. General Assembly, Carmen A. Orechio, as President of N.J. Senate and the N.J. Senate; denying plaintiffs' application for attorney fees and costs against Dr. Saul Cooperman and N.J. Department of Education, etc., filed 1-26-84. (Debevoise) Notice Mailed.
2- 6-84	62	Letter objections of state defendants to plaintiffs' application for attorney fees and costs filed 2-3-84.
2- 6-84	63	*Transcript* of proceedings held on 12-12-83 filed 2-3-84
2-21-84	64	Notice of appeal of defendants, Alan J. Karcher as Speaker of the New Jersey General Assembly, the New Jersey General Assembly, Carmen A. Orechio as President of the New Jersey Senate and the New Jersey Senate filed 2-17-84 at 11:46 A.M. (USCA #84-5.
2-21-84		Copies of notice of appeal sent to USCA and Pellettieri, Rabstein & Altman, Hannoch, Weisman, Stern, Besser, Berkowitz & Kin-

DATE	NR.	PROCEEDINGS Judge Debevoise Civil 83-89
		ney, Alfred E. Ramey, Jr., DAG, Wilentz, Goldman & Spitzer, R. Joseph Ferenczi, Esq.
3-12-84	65	Copy of transcript purchase order for hearing held 1-9-84 filed 3-8-84.
3-20-84	66	*Transcript* of proceedings held on 12-12-83 filed (See Doc #63)
3-30-84	67	Opinion filed 3-28-84. (Debevoise) (attorneys' fees for the pltf.)
4- 9-84		CLERK'S NOTE: Transcript needed for appeal was for 12-12-84 as per attorney for deft. Alan J. Karcher as Speaker of the New Jersey General Assembly.
4- 9-84	√	RECORD COMPLETE FOR PURPOSES OF APPEAL.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually; BONNIE SCHORSKE, as natural parent of MARK TULLOSS, an infant, and BONNIE SCHORSKE, individually; BRENDA BUTLER, as natural parent of CARY BUTLER, an infant, and BRENDA BUTLER, individually; GARY DREW, individually;

Plaintiffs,

v.

DR. SAUL COOPERMAN, Commissioner of the Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; EDISON TOWNSHIP BOARD OF EDUCATION; OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,

Defendants.

Civil Action No. 83-89

COMPLAINT

I. JURISDICTION

1. This is a Civil Rights action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201 and 2202. Plaintiffs seek to redress the declaration under color of state law by the defendants of rights secured to them by the First and Fourteenth Amendments to the United States Constitution and seek to have declared unconstitutional a state statute, to wit P.L. 1982, Ch. 205, which mandates religious observance in the public schools in the State of New Jersey. Plaintiffs contend that P.L.

1982, Ch. 205 results in the deprivation of plaintiffs' rights under the establishment clause of the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction of this Court is invoked under 28 U.S.C. § 1331 and 1343(3) and (4). There exists between the parties an actual controversy, justiciable in character, involving a sum in excess of $10,000.00 exclusive of interest and costs.

II. PARTIES

3. Plaintiff, Jean Ross, is the natural parent and guardian of plaintiff, Damon Ross. Plaintiff, Jean Ross, resides at 32 Markam Road, Princeton, New Jersey 08540.

4. Plaintiff, Damon Ross, is the natural child of Jean Ross and resides with his parent at 32 Markam Road, Princeton, New Jersey 08540.

5. Plaintiff, Jeffrey May, is an employee of defendant, Edison Township Board of Education, and resides at 90 Kendall Road, Kendall Park, New Jersey.

6. Plaintiff, Gary Drew, is the parent and guardian of children who attend Sheppard Elementary School, Old Bridge, New Jersey. Plaintiff Gary Drew resides at 36 Stevens Avenue, Old Bridge, New Jersey.

7. Plaintiff, Mark Tulloss, is the natural child of Bonnie Schorske and resides at 21 Lake Drive, Roosevelt, New Jersey.

8. Plaintiff, Bonnie Schorske, is the natural parent of plaintiff Mark Tulloss and resides in Princeton, New Jersey.

9. Plaintiff, Cary Butler, is the natural child of Brenda Butler and resides with his parent at 589-2 Auten Road, Sommerville, New Jersey.

10. Plaintiff, Brenda Butler, is the natural parent of plaintiff Cary Butler and resides at 589-2 Auten Road, Sommerville, New Jersey.

11. Defendant, Saul Cooperman, is the Commissioner of the Department of Education for the State of New Jersey and is charged with enforcing, implementing and establishing guidelines and regulations for legislation adopted by the legislature of the State of New Jersey which concerns the education of children in the State of New Jersey. Defendant Cooperman is charged with implementing, enforcing and promulgating P.L. 1982, Ch. 205 which forms the subject matter of the within litigation.

12. Defendant, Edison Township Board of Education, is a duly ceritified governmental subdivision of the Township of Edison charged with the responsibility of implementing and enforcing State statutes and regulations governing education in the public schools in the Township of Edison. Defendant, Edison Township Board of Education, has implemented P.L. 1982, Ch. 205 in all public schools within its jurisdiction.

13. Defendant, Old Bridge Township Board of Education, is a duly certified governmental subdivision of the Township of Old Bridge charged with the responsibility of implementing and enforcing State statutes and regulations governing education in the public schools in the Township of Old Bridge. Defendant, Old Bridge Township

Board of Education, has implemented P.L. 1982, Ch. 205 in all public schools within its jurisdiction.

III. STATEMENT OF FACTS

14. P.L. 1982, Ch. 205 was passed by the General Assembly of the State of New Jersey on May 18, 1982. The bill was passed by the New Jersey Senate on October 18, 1982. Governor Kean vetoed the bill on December 6, 1982. Governor Kean's veto was overridden by the General Assembly on December 13, 1982 and by the Senate on December 16, 1982. [A copy of P.L. 1982, Ch. 205 is attached hereto and incorporated herein].

15. On December 17, 1982, defendant, Dr. Saul Cooperman, Commissioner of the Department of Education, issued a Memorandum to all County Superintendents concerning the implementation of P.L. 1982, Ch. 205. [A copy of that memorandum is attached hereto and incorporated herein]. Defendant Cooperman's office adopted the position that no regulations or implementing guidelines would be supplied to local school districts, principals or teachers: "[T]he statute should be permitted to speak for itself."

16. Plaintiff, Damon Ross, is ten years of age and a student in the Fifth Grade at Riverside Public School. Riverside Public School is an elementary school within the Princeton Regional School District. The Princeton Regional School District has not yet implemented P.L. 1982, Ch. 205. Plaintiff Damon Ross, however, is threatened with enforcement of P.L. 1982, Ch. 205 and objects to its mandate as a matter of conscience. Plaintiff, Damon Ross, does not want to be forced to observe the moment of silence established and mandated by P.L. 1982, Ch. 205.

17. Plaintiffs, Jean Ross, Gary Drew, Brenda Butler and Bonnie Schorske, as parents and natural guardians of their respective children, object to their children being forced to comply with the mandate of P.L. 1982, Ch. 205. Plaintiffs make this objection based upon conscience and in the interests of their children as parents.

18. Plaintiff, Jeffrey May, is a full time, tenured faculty member of the Edison Township Regional School District. Plaintiff May teaches at John P. Stevens High School, Edison, New Jersey which is a part of the public school system maintained and operated by the defendant Edison Township Board of Education.

19. On or about December 17, 1982, plaintiff May voiced his objections to enforcing, participating in or requiring students to participate in the observance mandated by P.L. 1982, Ch. 205. Those objections were voiced to Principal Harold R. Alley. Similar objections were expressed by Mr. May to Deputy Superintendent of Schools for Edison Township, Dr. Joseph Kreske. Plaintiff May asked Dr. Kreske to be relieved of any responsibility as a teacher for implementing, participating in or abiding by the directive of P.L. 1982, Ch. 205. This request was refused.

20. On December 22, 1982, plaintiff May received a memo to all faculty from Principal Alley. The memo directed all faculty and students to participate in the moment of silence as mandated by P.L. 1982, Ch. 205. On that same date plaintiff told Mr. Alley that he would not abide by the directive for the reason that he believed that it violated his conscience, his personal philosophical beliefs, and that it was unconstitutional.

21. Plaintiff May has refused to lead or participate in any observance of P.L. 1982, Ch. 205. Plaintiff May does not intend to discipline any student who refuses to participate in said observance.

22. Plaintiff May has been threatened with disciplinary proceedings by a representative of defendant, Edison Township silence as mandated by P.L. 1982, Ch. 205. On that same date plaintiff told Mr. Alley that he would not abide by the directive for the reason that he believed that it violated his conscience, his personal philosophical beliefs, and that it was unconstitutional.

23. Plaintiff May has refused to lead or participate in any observance of P.L. 1982, Ch. 205. Plaintiff May does not intend to discipline any student who refuses to participate in said observance.

24. Plaintiff May has been threatened with disciplinary proceedings by a representative of defendant, Edison Township Board of Education, if he does not comply with P.L. 1982, Ch. 205 and the memo issued by Principal Alley. [A copy of that memo is attached hereto and incorporated herein].

25. Plaintiff May is currently under a threat of suspension for what he believes to be the valid exercise of his constitutional rights as well as the protection of the rights of his students.

26. The defendant, Commissioner of Education, has not and does not intend to supply local school districts with implementing guidelines and/or regulations.

27. School districts throughout the State of New Jersey have elected to implement P.L. 1982, Ch. 205 in a

variety of ways ranging from no observance or implementation to requesting that students stand for a moment of silent prayer.

IV. CAUSES OF ACTION

28. Plaintiffs have certain constitutionally protected rights under the First Amendment to the Constitution to freely practice their religious beliefs in the manner in which they want to but in no event to have the State impose upon them a mandated moment of meditation, prayer, contemplation or silence. Defendants' implementation and enforcement of P.L. 1982, Ch. 205 violates the Establishment Clause of the First Amendment to the U.S. Constitution.

29. Defendants' adoption of the policy reflected in P.L. 1982, Ch. 205 violates plaintiffs' rights under the due process clause of the Fourteenth Amendment in that the discretion with respect to how, when and where P.L. 1982, Ch. 205 is to be implemented has been left in the hands of individual school districts, principals and teachers, resulting in uneven, disparate and discriminatory enforcement of P.L. 1982, Ch. 205.

30. P.L. 1982, Ch. 205 is void on its face in that it fails to apprise superintendents, principals, faculty and students of what is proscribed and legislated therein all in violation of the First and Fourteenth Amendments to the U.S. Constitution.

31. P.L. 1982, Ch. 205 is in violation of Article III, Section I of the New Jersey Constitution which mandates that the powers of government shall be divided among

the three distinct branches of government: the legislative, executive and judicial.

32. Plaintiffs have suffered and continue to suffer immediate and irreparable harm by defendants passage and/or implementation of P.L. 1982, Ch. 205 and enforcement thereof in that:

(a) Plaintiffs have been precluded from the valid exercise of their rights pursuant to the First Amendment of the Constitution;

(b) Defendants threats of disciplinary proceedings have created an intimidating atmosphere in an effort to prevent plaintiffs from the valid exercise of their rights pursuant to the First Amendment.

33. Plaintiffs have no adequate remedy at law and are likely to prevail on the merits unless the relief herein demanded is granted, and plaintiffs will continue to suffer irreparable injury if that relief is not forthcoming.

WHEREFORE, plaintiffs pray that this Honorable Court do as follows:

(a) Assume jurisdiction of the within matter;

(b) Enter an Order declaring P.L. 1982, Ch. 205 as unconstitutional on its face and as applied contrary to the provisions of the First and Fourteenth Amendments to the Constitution;

(c) Enter an Order to temporarily and permanently enjoin defendants herein from enforcing and/or implementing P.L. 1982, Ch. 205; and

(d) Enter an Order awarding plaintiffs all attorneys fees and costs pursuant to 42 U.S.C. § 1988.

PELLETTIERI, RABSTEIN AND ALTMAN
13 W. Front Street
Trenton, NJ 08604

On Behalf of the American Civil Liberties Union of NJ

/s/ Richard M. Altman

(Exhibit next to Complaint)

ASSEMBLY, No. 1064

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1982

By Assemblymen ZANGARI, PATERNITI, HERMAN, Assemblywoman PERUN, Assemblymen DEVERIN, OTLOWSKI, PELLY, HENDRICKSON, COWAN, JANISZEWSKI, NAPLES, Assemblywoman COSTA, Assemblymen PELLECCHIA, GIRGENTI, RILEY, MARSELLA, DORIA, WATSON, Assemblywoman GARVIN, Assemblymen BOCCHINI, PATERO, DOYLE, KARCHER, MATTHEWS, CHARLES, BRYANT, PANKOK, VAN WAGNER, THOMPSON, VISOTCKY, BROWN, JACKMAN, FLYNN, BENNETT, T. GALLO, SHUSTED, CHINNICI, ROCCO, SCHUBER, KOSCO, MARKERT, Assemblywoman WRIGHT, Assemblymen FRANKS, ROD, MUZIANI, MEYER, HAINES, WOLF, KAVANAUGH, SMITH, PALAIA, MILLER, KELLY, GORMLEY and LITTELL

Referred to Committee on Education

AN ACT to allow students of public schools to participate in a *1 minute period of silence* before the opening of

each school day and supplementing chapter 36 of Title 18A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Principals and teachers in each public elementary and secondary school of each school district in this State shall permit students to observe a 1 minute period of silence to be used solely at the discretion of the individual student, before the opening exercises of each school day for quiet and private contemplation or introspection.

2. This act shall take effect immediately.

(Exhibit next to Complaint)

STATEMENT

This bill allows each student to participate in a 1 minute perior of voluntary silence to be used solely at the discretion of the individual student.

To: County Superintendents and EIC Directors

Date: December 17, 1982

Message: *For relay to Local District Superintendents*

Superintendent will be provided with a copy of Assembly Bill 1064 for transmission to local districts without comment.

Statute should be permitted to speak for itself. Text as follows: "Be it enacted by the State and General Assembly of the State of New Jersey:

> Principals and teachers in each public elementary and secondary school of each school district in this state shall permit students to observe a one minute period of silence to be used solely at the discretion of the individual student before the opening exercise of each

school day, for quiet private contemplation or introspection."

This action is to take effect immediately.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,

Plaintiffs,

v.

DR. SAUL COOPERMAN, Comissioner of the Department of Education, et al.,

Defendants.

Civil Action No.

AFFIDAVIT OF BRENDA BUTLER

STATE OF NEW JERSEY)
) ss.:
COUNTY OF SOMERSET)

BRENDA BUTLER, of full age, being duly sworn, according to law, upon her oath, deposes and says:

1. I am the natural parent and guardian of Cary Butler who is a student in the Twelfth Grade at Hillsborough High School.

2. I have read and reviewed Cary's affidavit and know the facts stated therein to be true. I agree with Cary now and I did so upon the passage of this bill and its implementation, that neither prayer nor religion has any place in the public schools. This matter was discussed in our home with Cary and I stand behind his right to express his feelings, his beliefs and his philosophical and political convictions on this subject.

3. I see no educational purpose to this law and fail to see what benefit can be derived for my son by enforcing it against him.

/s/ Brenda Butler

January 10, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,
Plaintiffs,
v.
DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al.,
Defendants.

Civil Action No.

AFFIDAVIT OF CARY BUTLER

STATE OF NEW JERSEY)
) ss.:
COUNTY OF SOMERSET)

CARY BUTLER, being seventeen (17) years of age and knowing and understanding what it means to tell the truth, deposes upon his oath and states as follows:

1. My name is Cary Butler and I reside at 589-2 Auten Road, Sommerville, New Jersey.

2. I am 17 years of age and I am in the Twelfth Grade at Hillsborough High School, which is part of Hillsborough Township School District.

3. I first became aware of the implementation of Assembly Bill 1064 through discussion in my home with my mother, Brenda Butler. My mother and I both opposed the passage of this bill and agreed with Governor Kean concerning his veto.

4. On December 22, 1982, the law was implemented in our school. The school principal, Mr. Spaeth, read the law over the loudspeaker when I was in my homeroom at the beginning of the day. Once the law was read, we were directed to participate by the principal and to sit for one moment of silence and to be perfectly quiet and still.

5. I asked my teacher whether or not I could go to the office since I did not choose to participate in this observance and because I interpreted the law to read and to mean that is was discretionary or voluntary with each individual student. My teacher said that I would have to go to the office and that determination would have to be made there.

6. I left the classroom and I was walking down the hall and was directed to stop by another teacher in the hallway who told me to stand still and to be quiet because the moment of silence was being observed. I said, "I am not sitting or standing in school and praying." I continued on down the hallway to the principal's office. Again I was directed to be quiet by this teacher. The principal came out of his office and began yelling at me: "This is the law," he said, "I didn't make the law, I have to enforce it; you must obey it." I replied that I interpreted

the law to mean that I had a choice as to whether or not I wanted to participate in this moment of silence and I told the principal that I chose not to. I told him "You are not going to make me sit in school and pray." The principal took down my name.

7. Later that day I was called down to the office of the vice-principal. I was charged with insubordination for failing to stop when directed to do so by the teacher in the hallway earlier that morning. I was suspended from school in accordance with our disciplinary procedures. I objected to the suspension and I told the vice-principal that I did not think it was fair under the circumstances. I then went to the principal and explained to him that the suspension was unfair under the circumstances because I was only exercising my rights under the law and my freedom of conscience as I understood it. The principal told me that I would have to go to the superintendent and said: "I agree with you, I don't say it's right or wrong, but that's the law."

8. A day later, when I was sitting in the disciplinary room where suspended students are sent, I was told by the vice-principal that my interpretation of the law was wrong and that I had "no choice" in the matter. We argued back and forth on the issue but the suspension was continued in effect.

9. On December 23, 1982, after my parents contacted the school and the ACLU, I was permitted the privilege of leaving homeroom during the moment of silence and going to the principal's office. I asked the principal whether or not this procedure would be made available to other students and announced to them. He said "No, they

would not announce it, but would rather handle complaints like this on a case-by-case basis."

10. I go to school for an education. I am not religious at all. I feel that the school has no right to enforce this law and to direct me to participate in what I consider to be a religious service or observance. I see this as a first step in the direction of bringing full scale religion back into the schools. It is wrong and as a matter of conscience I am opposed to it.

/s/ Cary Butler

January 10, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,
Plaintiffs,

v.

DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al.,
Defendant.

Civil Action No.

AFFIDAVIT OF MARK TULLOSS

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MONMOUTH)

MARK TULLOSS, being thirteen (13) years of age and knowing and understanding what it means to tell the truth, deposes upon his oath and states as follows:

1. My name is Mark Tulloss, I reside at 21 Lake Drive, Roosevelt, New Jersey.

2. I am a student in the Eighth Grade at Roosevelt Junior High School in Roosevelt, New Jersey.

3. In December, shortly before Christmas, I was made aware of the fact that the State legislature had passed a law directing that the children in public schools participate in a moment of silence. I objected to the requirement that I participate in this moment of silence. Most of the other students in my class objected to participating in it as well.

4. My objections are based upon the fact that I feel this is an attempt to get prayer back into the public schools. I feel that if I wanted to pray in school I would attend a parochial school of my choosing. I don't feel that the State legislature should force upon anyone opinions which are not derived from scientific thought and the scientific process. The purpose of school is education not religious training. I see no educational benefit in prayer or this moment of silence.

5. Our class discussed this bill at great length with our teacher. We have opted not to participate in the moment of silence. Although other teachers might insist that the students participate, our did not.

/s/ MARK TULLOSS

January —, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,
Plaintiffs,
v.
DR. SAUL COPPERMAN, Commissioner of the Department of Education, et al.,
Defendants.

Civil Action No.

AFFIDAVIT OF JEAN ROSS

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

JEAN ROSS, of full age, being duly sworn, according to law, upon her oath, deposes and states as follows:

1. I am the natural parent and guardian of Damon Ross, who resides with me at 32 Markam Road, Princeton, New Jersey.

2. My son Damon is 10 years of age and attends the Fifth Grade of the Riverside Elementary School. Riverside is a part of the Princeton Regional School District.

3. As Damon's parent, I object strongly to his participation in any religious observance conducted in the public schools. I have contacted the Superintendent's Office for the Princeton Regional School District in order to find out what intentions, if any, Princeton has with respect to Assembly Bill 1064. In December, I was told that the bill had not been implemented and that the schools in the Princeton Regional School District were awaiting direc-

tion from the Department of Education. In January, I was told by Mr. Houston, the Superintendent, that the Princeton schools would not implement the law without further clarification from the Department of Education.

4. I have discussed this issue with my son Damon and he objects to being forced or intimidated into participating in any religious observance. He perceives, as do I, the moment of silence or contemplation and introspection to be one suggestive of prayer and he objects to any participation for the same reasons that I do. We consider this a matter of conscience and one which belongs in the home, in the family, or in the church.

5. My son, Damon, reported to me that he initiated a classroom discussion on the subject of the bill and that he appeared to be the only child in his class who was unwilling to participate in a moment of silence.

6. I asked Damon how he would feel if the law was implemented and he said he "would not like it." I asked: "What would you do?" He replied: "I couldn't do anything because my teacher said that if the school established a rule, I'd have to obey it."

7. Damon has close relatives who are Quakers and observes moments of silence as a religious phenomenon. He identifies silence as a form of prayer based upon his experiences.

8. I consider Damon to be under threat of compliance with this law, once implemented in his school district, through either subtle or direct intimidation. I see no educational purpose to be served by the law and I see no

necessity for it; and I object to the imposition of a religious ritual in the public schools.

JEAN ROSS

January —, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually, et al., Plaintiffs,	Civil Action No.
v.	
DR. SAUL COOPERMAN, Commissioner of the Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; et al., Defendants.	AFFIDAVIT OF DR. REVEREND GEORGE YOUNGER

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

REVEREND GEORGE YOUNGER, of full age, being duly sworn, according to law, upon his oath, deposes and states as follows:

1. I am the Executive Minister of the American Baptist Churches of the State of New Jersey. In that capacity I am the Chief Administrative Officer of 232 Baptist churches throughout the State of New Jersey.

2. I am theologically trained, having received my Master of Divinity degree from Yale Divinity School, New Haven, Connecticut, and my Doctor of Ministry degree from New York Theological Seminary.

3. I am a member of numerous professional societies and organizations, among them: The American Society of Christian Ethnics, the Association of the Sociology of Religion, the Society for the Scientific Study of Religion, and the Religious Research Association.

4. I am a professional ethicist and religious researcher who has studied both the theoretical component and the applied or practical component of the concept of prayer in this and other societies. I have reviewed Assembly Bill 1064 and I feel that my theological training and research qualifies me to comment upon this bill both in theory and in practice.

5. Although A-1064 purports to allow students in the public schools in the State of New Jersey to utilize one minute of silence for whatever purpose they might chose, as a practical matter many of those same students will feel compelled to pray. The reasons for this are rooted in the fact that many religious sects require their members to engage in some outward manifestation symbolic of the act of prayer. For example, a Moslem is required to kneel and bow to the east when praying; a Roman Catholic is expected to fold his or her hands in an ele-

vated fashion; a Charismatic Christian, whether a Roman Catholic or an Evangelical Protestant, also raises his or her hands. Many Protestants feel compelled to bow their heads and close their eyes. These are just some examples of the different cultural approaches employed by institutional religion in this society. In our culture, prayer frequently has symbolic outward manifestations and because of these manifestations, students who chose not to engage in prayer and to utilize this "moment of silence" for some other purpose will be noticeable—not only to the students praying but to the teacher or leader responsible for overseeing this moment. There will be a natural distinction drawn in the classroom, leaving many youngsters self-conscious about their activities during this mandated observance.

6. How the teacher or leader utilizes this moment is, of course, critical and will vary from individual to individual. Many teachers themselves will engage in prayer; many will express or engage in outward manifestations of that activity if it is required or expected by their religious denominations. These teachers could then impose a worshiplike atmosphere on the moment of silent meditation or contemplation, particularly so where students are required to stand in group observation. A leader who himself or herself engages in prayer will naturally send a cue or signal to students with respect to what he or she thinks ought to be done with that moment of silence. The younger the child the more receptive he or she will be to that cue. That same teacher may even criticize a student or students

who are not participating in the manner in which the teacher feels is appropriate to the mandate.

7. The phenomenon of contemplation referred to in Assembly Bill 1064 implies an activity where one meditates or thinks about some external subject. One of the theologically accepted definitions of contemplation is prayer. Both meditation and contemplation in our society have a religious significance. Contemplation needs an object. Contemplation carries with it the implicit understanding that one is not to think of one's self or one's own particular fate but rather to contemplate or consider something external to the self. Introspection, on the other hand, implies a self-reflective task, i.e. evaluating, re-evaluating, considering or re-considering conduct by the self. Both of these concepts, introspection and contemplation, carry with them a religious connotation and significance in our culture.

/s/ REVEREND GEORGE YOUNGER

January 5, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually, et al.,

Plaintiffs,

v.

DR SAUL COOPERMAN, Commissioner of the Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; et al.,

Defendants.

Civil Action No.

AFFIDAVIT OF REVEREND DUDLEY E. SARFATY

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

REVEREND DUDLEY E. SARFATY, being of full age and duly sworn, upon his oath, deposes and states as follows:

1. I am Associate General Secretary to the New Jersey Council of Churches located at 116 North Oraton Parkway, East Orange, New Jersey.

2. I am an ordained Presbyterian minister having received my Bachelors and Masters of Divinity at Union Theological Seminary, New York, New York. I am a member of the Presbytery of the Palisades and I have pastored in New York and New Jersey.

3. As Associate General Secretary to the New Jersey Council of Churches my duties include legislative monitoring and reporting on church related issues. In that ca-

pacity I monitored the legislative sessions related to Assembly Bill 1064. I attended both the Assembly and Senate sessions related to the override of the veto of that bill. Since I am responsible for reporting back to the Secretary of the New Jersey Council as well as affiliates on those issues of concern and interest to the church, I took notes reflective of the debate and discussion which occurred by and between members of the legislature.

4. It was clear from the remarks made by the proponents of Assembly Bill 1064 that the purpose, objective and intent of this legislation is to bring prayer back into the schools. The remarks made in the Assembly and Senate by the proponents of 1064 reveal that these legislators perceived prayer as a potential instrument of social control; an instrument which should be reintroduced into the public schools of this State in order to elevate the moral fiber of New Jersey students. Although I cannot remember all of the comments and remarks made by proponents of the bill some which stand out and which reveal clearly the intent of the legislature in passing this bill are as follows:

(1) Assemblyman Adubato expressed the view that he hoped that Assembly Bill 1064 would eventually lead to financial aid to parochial schools. Assemblyman Adubato considered the bill a good step in that direction.

(2) Senator Dumont expressed the view that he was in favor of prayer because he was against crime and disruption in our society, and he thought that Assembly Bill 1064 would alleviate or ameliorate these social problems.

(3) Senator Cardinale told the legislature " . . . we know what the people want," and that there was

no question as to whether or not he was the servant of the people or of the Court. Senator Cardinale very candidly admitted that Assembly Bill 1064 was a compromise bill, one which offered some consolation to those who wanted a formal prayer reintroduced in the public schools.

(4) Senator Brian Kennedy conceded that his motivation in voting for the bill was that he wanted prayer back in the public schools. Senator Kennedy remarked: "Nobody knows what the kids are doing, but I hope they are praying."

5. These are just some of the remarks which I can recall being made by those legislators who advanced and promoted the bill. It would be fair to say that almost the entire legislative debate on this bill focused on whether or not A-1064 was a "prayer bill". The discussion led me to strongly infer that the primary purpose of this bill was to provide a constitutional opportunity for private prayer in the public schools. Educational goals and objectives, as normally understood by members of the teaching profession, were not discussed. I recall no oral discussion concerning the educational merits of the enterprise.

/s/ REVEREND DUDLEY E. SARFATY

January 4, 1983

(Notary omitted in printing)

ALPER,

Plaintiff,

vs.

COOPERMAN, et al.,

Defendant.

STATE OF NEW JERSEY
COUNTY OF MERCER

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

DOCKET NO.

Civil Action

AFFIDAVIT OF JEFFREY MAY

JEFFREY MAY being of full age and duly sworn upon his oath deposes and says as follows:

1. I, Jeffrey May, reside at 90 Kendall Road, Kendall Park, New Jersey, and I am a tenured faculty member at John P. Stevens High School, Edison, New Jersey. John P. Stevens High School is within the Edison School District and I have been with that school district for nine consecutive years as a full time faculty member.

2. Prior to my tenure with the Edison School District, I was employed as a full time faculty member with various private schools for five years. During my entire teaching career, I have taught a variety of grades, among them fifth, sixth, eighth, ninth, eleventh and twelfth grades. I am currently teaching physics and physical sciences to eleventh and twelfth grade students.

3. I am not a member of any organized institutional religion and I would describe myself as an agnostic.

4. On December 17, 1982, I became aware of the passage of Bill A-1064 on the veto override. I immediately

went to see Principal Harold R. Alley to discuss with him my objections to participating in anyway whatsoever with the observance and/or enforcement or implementation of this Bill in my classroom. Mr. Alley informed me that he knew nothing about the Bill, and that I should not be concerned until that time when he had an opportunity to review it and to make a full determination as to what the public schools in Edison Township would do.

5. On December 17, 1982, after discussing the matter with Principal Alley, I contacted the Deputy Superintendent of Schools for Edison Township, Dr. Joseph Kresky. I asked Dr. Kresky to be relieved of any responsibility as a teacher for implementing, participating in or abiding by the directive of Assembly Bill 1064. Dr. Kresky refused this request.

6. On December 22, 1982, I received in my faculty mailbox a memo "To All Faculty Members" from Mr. Alley, Principal of J. P. Stevens High School. The memo directed all faculty and students to participate in a moment of silence as directed by the State Legislature in Assembly Bill 1064. Mr. Alley confirmed for me the fact that I was required as a faculty member to participate in and to direct students to participate in this observance.

7. On that same date, December 22, 1982, I informed Principal Alley that I did not intend to and would not comply with his directive and the directive of the State Legislature to join in this religious observance. My reasons for non-compliance were expressed and told to Principal Alley before school started. Those reasons were and continue to be as follows:

(1) I consider this law to be unconstitutional and a violation of the First Amendment to the Constitution respecting establishment of religion;

(2) This law violates my conscience and my personal philosophical beliefs;

(3) The Attorney General and the Governor of the State of New Jersey consider this law to be unconstitutional; and I believe that to direct and/or discipline students with regard to this bill is to engage in an illegal and unlawful act.

8. In spite of my objections as articulated to Principal Alley, I was directed to participate in the moment of silence. I reiterated to Principal Alley my objections and that I consider this mandate by the Legislature to be unconstitutional, illegal, and in violation not only of my conscience but the rights of students in the public schools of New Jersey.

9. I interpret and perceive Assembly Bill 1064 as requiring a religious service or observance in the classroom.

10. It has been my experience as a teacher of many children of many ages over the past 14 years that such an observance is and will be perceived by some youngsters as a religious service. As an educator and teacher, I see absolutely no educational benefit to be derived from the requirements established in Assembly Bill 1064. As a teacher there are various points during a day when I might ask a class to calm down, sit quietly and consider and reflect upon various concepts in physics that we might be discussing. For the State Legislature to direct every student across the State of New Jersey at the beginning of every day to

engage in a moment of silence without regard to whether or not the particular student, class, or school need that moment of silence at that particular time is irrational and meaningless from an educational point of view. There may well be time when students ought to quiet down, contemplate whatever has been discussed in class or whatever has transpired in the classroom but these moments should be left to the discretion of the individual teacher as he or she deems fit.

11. I feel very strongly that this law violates my rights as a citizen of the United States, my students' rights as citizens of the United States and it is unconscionable for me to require others to participate in this directive and to discipline them for failure to do so. As a teacher, I am required to discipline any student who fails to abide by the regulations issued through the principal's office and the School Board of Edison Township. I see this Bill as intending a religious purpose, initiating a religious service and totally inappropriate and meaningless to the educational process.

12. I have been threatened with disciplinary proceedings by the School District, and with possible suspension for what I believe to be the valid expense of my constitutional rights. [See Exhibit A attached hereto.]

/s/ Jeffrey May

December 30, 1982

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,	)	Civil Action No.
Plaintiffs,	)	
v.	)	AFFIDAVIT OF RITA ROTHENBERG
DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al.,	)	
Defendants.	)	

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

RITA ROTHENBERG, being of full age and duly sworn, upon her oath, deposes and states as follows:

1. I reside at 233 Victoria Court, Matawan, New Jersey and I have a son, Joshua Rothenberg, who is a first grade student at Strathmore Elementary School in Matawan.

2. The Strathmore Elementary School is a part of the Matawan-Aberdeen Regional School District.

3. On or about December 21, 1982, just before the Christmas recess, I was informed through my son, Joshua, that the students in his class were asked to sit down in their seats for a moment of silence. Joshua was apparently referring to Assembly Bill 1064. My husband and I discussed

this with Joshua and we told him that it was our wish that he not observe or participate in that activity. Joshua began to cry and was very upset at the prospect of being singled out from the other children.

4. My husband is a elementary school teacher in the New York City school system and was formerly a member of the school board for the Matawan-Aberdeen Regional School District. Neither he nor myself see any educational purpose in Assembly Bill 1064. In fact, I perceive it as mandating prayer or religious observance in the public schools, a practice which I object to and in which I do not want my son Joshua to participate. Both my husband and I feel that prayer and/or religious observance of this sort belongs either in the home or in a church or synagogue of one's choice but not in the public schools.

5. Although we feel very strongly as a matter of constitutional principal and conscience that this practice violates our rights and the rights of our son, Joshua, it is very difficult, if not impossible, as a parent to ask a very young child to set himself apart and to leave the classroom when this activity is taking place. We do not want Joshua to participate in this observance, but on the other hand we are fully aware of the peer pressure placed upon him to do so, and we are sensitive to his feelings that he will be singled out if he does not participate.

6. This kind of activity whether it is called prayer, meditation or contemplation, belongs in the home, the family or a church or synagogue but not in the public schools when it creates this kind of tension in children and forces

parents to compromise their political and philosophical beliefs.

RITA ROTHENBERG

January —, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY May, individually, et al., Plaintiffs, v. DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al., Defendants.	)	Civil Action No. AFFIDAVIT OF GARY DREW

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MIDDLESEX)

GARY DREW, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am Gary Drew and I reside at 36 Stevens Avenue, Old Bridge, New Jersey.

2. I have two children who attend public school in the Old Bridge Township School District. I have a daugh-

ter, Jamie Drew, who is six (6) years of age and in the First Grade at Shepherd Elementary School. I have another daughter, Dina Drew, who is nine (9) years of age and attends Third Grade at the Shepherd Elementary School. The Shepherd Elementary School is a part of the Old Bridge Township School District.

3. I first became aware of legislation attempting to re-introduce prayer into the public schools through our local school board when it passed an ordinance mandating a moment of silence at the beginning of each school day in the Old Bridge Township School District.

4. At that time I objected as a matter of conscience to the introduction of any such ordinance and opposed its mandate. The matter become moot because the ordinance was overturned by a Federal District Court Judge.

5. Soon thereafter, the State legislature passed Assembly Bill 1064 addressing the same issues. My objections to the Old Bridge ordinance stated apply with equal force to this legislation which has been mandated by our State legislature and which is being implemented in the Shepherd Elementary School which my children attend.

6. My children are being raised in the Roman Catholic faith and my wife and I feel that their religious training and observance belongs either in the home or at church or under the guidance of the parish priest. I do not feel that some teacher in a public school classroom should be permitted to determine how this "moment of silence" is to be used by young and impressionable children. Though many teachers may be prudent and utilize the moment in a way that I would not personally find it offensive, there are others who clearly would not. The law does not provide

for any way in which I might monitor the activities of any given teacher concerning this moment of silence.

7. My wife and I have not registered any formal objection with the School District concerning the moment of silence because of the young age of our children. Our decision to let this ride was based upon our sensitivity to the peer pressure which our children might experience and the hope that this matter will be resolved in court. My wife is opposed to forcing the children to leave the room because she feels that they would find it embarrassing. It creates a dilemma for us as parents, particularly me, because I feel that this is a matter of personal conscience and that my children should not be subjected to any religious observance in the public schools.

8. I consider this law an earnest attempt by the State legislature to re-establish prayer in the public schools and I consider it to be a violation of not only my rights and my children's rights but the rights of others as well.

/s/ Gary L. Drew

January 6, 1983

(Notary omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually; BONNIE SCHORSKE, as natural parent of MARK TULLOSS, an infant, and BONNIE SCHORSKE, individually; BRENDA BUTLER, as natural parent of CARY BUTLER, an infant, and BRENDA BUTLER, individually; GARY DREW, individually;	)	Civil Action No. 83-89
Plaintiffs,	)	
v.	)	ORDER TO SHOW CAUSE
DR. SAUL COOPERMAN, Commissioner of the Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; EDISON TOWNSHIP BOARD OF EDUCATION; OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,	)	
Defendants.	)	

This matter being opened to the Court by Pellettieri, Rabstein and Altman, attorneys for plaintiffs, Richard M. Altman, Esquire, appearing, upon application for an Order compelling defendants to show cause why a Preliminary and Permanent Injunction should not issue restraining defendants their officers, agents, servants, employees, and successors from enforcing P.L. 1982, Ch. 205, and for an

Order temporarily restraining enforcement of the statute by defendants pending a hearing on the application for Preliminary Injunction and, notice having been given to counsel for defendants, and the Court having reviewed the Verified Complaint of plaintiffs, and Affidavits attached hereto and having heard and considered the language of the statute, Briefs and arguments of counsel; and it appearing therefrom that the challenged Statute, P.L. 1982, Ch. 205, is unconstitutional on its face and as applied in that it violates the First and Fourteenth Amendments to the U.S. Constitution and that immediate and irreparable injury will result to plaintiffs pending a hearing on the application for Preliminary Injunction;

NOW, THEREFORE, it is on this 10th day of January, 1983, ORDERED that defendants show cause before this Court on the 18th day of January, 1983, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, at the United States Courthouse and Post Office in Trenton, New Jersey, why a preliminary and permanent injunction should not issue restraining defendants, their officers, agents, servants, employees, and successors from enforcing or implementing P.L. 1982, Ch. 205;

IT IS FURTHER ORDERED that defendants submit briefs 1 day prior to the return date of this Order; and

IT IS FURTHER ORDERED that service of a copy of the Complaint and Order, together with supporting papers, shall be permitted to be made by a respresentative or agent of the law firm of Pellettieri, Rabstein and Altman within 2 days hereof; and

IT IS FURTHER ORDERED that for the reasons set forth in a bench opinion, defendants pending a hearing

on the application for a Preliminary Injunction, are enjoined from enforcement of P.L. 1982, Ch. 205; and

IT IS FURTHER ORDERED that defendants shall have leave to move for dissolution or modification of the Temporary Restraining Order contained hereon on 2 days notice to plaintiffs' counsel and

IT IS FURTHER ORDERED that defendants are required to serve upon the attorneys for plaintiffs, whose name and office address appears above, an Answer to the Complaint within twenty (20) days after the service of the within Order, exclusive of the day of service. If defendants fail to answer or appear in accordance with the Rules of Court, judgment by default may be rendered against defendants for the relief demanded in the Complaint. Defendants shall promptly file their Answer or appearance and Proof of Service thereof with the Clerk of the United States District Court for the District of New Jersey, United States Post Office Building, Trenton, New Jersey, in accordance with the Rules of Civil Practice and Procedure.

/s/ Dickinson R. Debevoise

U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually; BONNIE SCHORSKE, individually; BRENDA BUTLER, as natural parent of CARY BUTLER, an infant, and BRENDA BUTLER, individually; GARY DREW, individually, Plaintiffs, v. DR. SAUL COOPERMAN, COMMISSIONER OF THE DEPARTMENT OF EDUCATION; NEW JERSEY DEPARTMENT OF EDUCATION; EDISON TOWNSHIP BOARD OF EDUCATION; OLD BRIDGE TOWNSHIP BOARD OF EDUCATION, Defendants.	Civil Action Civil Action No. 83-89 (DRD) ORDER (Filed January 14, 1983)

This matter being opened to the Court by Pellettieri, Rabstein and Altman, attorneys for plaintiffs, Richard M. Altman, appearing on January 10, 1983, upon application for an Order compelling defendants to show cause why a Preliminary and Permanent Injunction should not issue restraining defendants, their officers, agents, servants, employees, and successors, from enforcing P.L. 1982, Ch.

205, and for an Order temporarily restraining enforcement of the statute by defendants pending a hearing on the application for Preliminary Injunction and, notice having been given to counsel for defendants, and the Court, after having reviewed the Verified Complaint and Affidavits submitted by plaintiffs and after having heard the arguments of counsel, having determined that P.L. 1982, Ch. 205 was unconstitutional in violation of the First and Fourteenth Amendment to the U.S. Constitution and having determined that immediate and irreparable injury will result to plaintiffs pending a hearing on the application for Preliminary Injunction, the Court on January 10, 1983 Ordered, for the reasons set forth in its bench opinion, defendants, pending a hearing on the application for a Preliminary Injunction, enjoined from enforcement of P.L. 1982, Ch. 205; and

It now appearing that a further Order is necessary to preserve the effect of the temporary restraint previously ordered; and

It appearing that the counsel for defendant Dr. Saul Cooperman and for the interveners Assembly and Senate of the State of New Jersey have given their consent to the entry of this further order;

NOW, THEREFORE, it is on this 14th day of January, 1983 ORDERED that defendant Dr. Saul Cooperman, Commissioner of Education is directed to notify the school districts of the State of New Jersey by any means he deems appropriate to effectuate the terms of this Order, that this Court has made an initial determination that P.L. 1982, Ch. 205 is unconstitutional and that a temporary restraint has been issued restraining any further enforce-

ment of that provision by defendants and that pursuant to the further Order of this Court the local school districts of the State of New Jersey, their officers, agents, servants, employees and successors are to immediately cease any further enforcement of P.L. 1982, Ch. 205, pending a hearing for Preliminary Injunction.

/s/ Dickinson R. Debevoise, U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et. al.,	)	
Plaintiffs,	)	Civil Action No. 83-89
v.	)	ORDER PERMITTING INTERVENTION
DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al.,	)	(Filed January 18, 1983)
Defendants.	)	

This matter being opened to the Court by Marinari and Farkas, P.A., Lawrence T. Marinari, Esq., appearing, upon application for an Order permitting intervention as direct party defendants by Alan J. Karcher in his representative capacity as Speaker of the New Jersey General Assembly; the New Jersey General Assembly; Carmen A. Orechio in his representative capacity as President of the New Jersey Senate; and the New Jersey Senate; and it appearing that Pellettieri, Rabstein & Altman, attorneys for the plaintiffs, Irwin Kimmelman, Attorney General of the State of New Jersey, attorney for defendants Dr. Saul Cooperman and the New Jersey Department of Education and Joseph D. Ferenczi, Esq., attorney for Edison Township Board of Education and Wilentz, Goldman & Spitzer, attorneys for the Old Bridge Township Board of Education do not object to the intervention and consent thereto;

NOW, THEREFORE, it is on this 18 day of January, 1983 ORDERED that Alan J. Karcher in his representative capacity as Speaker of the New Jersey General Assembly; the New Jersey General Assembly; Carmen A. Orechio in his representative capacity as President of the New Jersey Senate; and the New Jersey Senate; be permitted to intervene as direct party defendants in Civil Action No. 83-89.

/s/ Dickinson R. Debevoise, U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually; JEAN ROSS, as natural parent of DAMON ROSS, an infant, and JEAN ROSS, individually; BONNIE SCHORSKE, as natural parent of MARK TULLOSS, an infant, and BONNIE SCHORSKE, individually; BRENDA BUTLER, as natural parent of CARY BUTLER, an infant, and BRENDA BUTLER, individually; GARY DREW, individually;	)	Civil Action No. 83-89
Plaintiffs,	)	ANSWER OF DEFENDANTS ALAN J. KARCHER IN HIS REPRESENTATIVE CAPACITY AS SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY; THE NEW JERSEY GENERAL ASSEMBLY; CARMEN A. ORECHIO IN HIS REPRESENTATIVE CAPACITY AS PRESIDENT OF THE NEW JERSEY SENATE; AND THE NEW JERSEY SENATE
v.	)	
DR. SAUL COOPERMAN, Commissioner of the Department of Education; NEW JERSEY DEPARTMENT OF EDUCATION; EDISON TOWNSHIP BOARD OF EDUCATION; OLD BRIDGE TOWNSHIP BOARD OF EDUCATION; ALAN J. KARCHER, in his representative capacity as Speaker of the New Jersey General Assembly; the NEW JERSEY GENERAL ASSEMBLY; CARMEN A. ORECHIO in his representative capacity as President of the New Jersey Senate; and the NEW JERSEY SENATE,	)	
Defendants.	)	

The defendants, Alan J. Karcher in his representative capacity as Speaker of the New Jersey General Assembly; the New Jersey General Assembly; Carmen A. Orechio in his representative capacity as President of the New Jersey Senate; and the New Jersey Senate, by way of answer to the plaintiff's complaint, say:

1. Defendants deny the allegations contained in paragraphs 1, 2, 28, 29, 30, 31, 32, 33 of the complaint.

2. Defendants deny having sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 of the complaint.

3. Defendants admit the allegations contained in paragraphs 11 and 14 of the complaint.

FIRST AFFIRMATIVE DEFENSE

This Court is without the jurisdiction over the subject matter and the other parties to this law suit.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which the relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to allege sufficient facts presenting a case of controversy appropriate for Declaratory Judgment.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to bring this suit.

FIFTH AFFIRMATIVE DEFENSE

This action is barred because the issue is non-justiciable.

SIXTH AFFIRMATIVE DEFENSE

This action is barred by the Political Question Doctrine.

WHEREFORE, the defendants demand:

1. That the complaint filed by the plaintiffs be dismissed;

2. Or that judgment be entered in the defendants' favor and against the plaintiffs;

3. The defendants be awarded such other relief as the Court may deem just and proper.

MARINARI AND FARKAS, P.A.

By /s/ Lawrence T. Marinari
Attorneys for Defendants

Dated: February 18, 1983

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,	)	Civil Action No. 83-89
Plaintiffs	)	NOTICE OF MOTION
vs.	)	
DR. SAUL COOPERMAN, et al.,	)	(Filed February 22, 1983)
Defendants	)	

TO: PELLETTIERI, RABSTEIN ALTMAN
13 West Front Street
Trenton, New Jersey 08604
Attorneys for Plaintiffs

PLEASE TAKE NOTICE that on March 14, 1983, at 10:00 a.m. or as soon thereafter as counsel may be heard, counsel for the defendants Alan J. Karcher in his representative capacity as Speaker of the New Jersey Assembly; the New Jersey General Assembly and Carmen A. Orechio, in his representative capacity as President of the New Jersey Senate; and the New Jersey Senate, shall move before the Honorable Dickinson R. Debevoise, Judge, United States District Court for the District of New Jersey for an Order pursuant to the provisions of Rule 26(c) (1) and (4) suppressing or otherwise limiting the plaintiffs' right to propound interrogatories or take depositions of legislators, senators and assembly persons of the intevenor defendants and specifically quashing or otherwise limiting Interrogatory Nos. 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of Interrogatories served by plaintiffs' attorney on intevenor defendants' on or about January 26,

1983; and suppressing or otherwise precluding depositions of Assembly Representatives Deverin, Zingari, Wolf, Adubato, Otlowski, Pelly, Hendrickson, Cowan, Naples, Janiszewski, Costa, Pellecchia, Girgenti, Riley, Marsella, Doria, Watson, Garvin, Bocchini, Patero, Doyle, Karcher, Matthews, Charles, Bryant, Paterniti, Herman, Perun, Pankok, Van Wagner, Thompson, Visotcky, Brown, Jackman, Flynn, Bennett, T. Gallo, Shusted, Chinnici, Rocco, Schuber, Kosco, Markert, Wright, Franks, Rod, Muziani, Meyer, Haines, Kavanaugh, Smith, Palaia, Miller, Kelly, Gormley and Littell and Senators Dumont, Bassano, Haggdorn, Kennedy, Orechio, McManamon, Zane and former Senators Eugene Bedell and William Musto, whose depositions were noticed by plaintiffs' attorney by Notice of Deposition served on intevenor defendants on or about dated January 26, 1983, on the grounds that the Interrogatories and proposed depositions violate the legislative privilege of the New Jersey General Assembly and the New Jersey Senate and the individual legislators thereof and are further designed for the discovery of information which is neither relevant, and/or otherwise admissible in the within action. In support of this motion, defendants will rely upon the brief submitted herewith.

/s/ William W. Robertson

Dated: February 22, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,	)	
Plaintiffs,	)	Civil Action No. 83-89
v.	)	
DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al.,	)	NOTICE OF MOTION
Defendants.	)	

TO: ALFRED E. RAMEY, JR., ESQUIRE
Deputy Attorney General
R.J. Hughes Justice Complex
New Warren & Market Streets
Trenton, New Jersey 08625

LAWRENCE T. MARINARI, ESQUIRE
Marinari and Farkas
1901 N. Olden Avenue Extension
Suite 26A
Trenton, New Jersey 08618

WILLIAM W. ROBERTSON, ESQUIRE
Hannoch, Weisman, Stern, Besser,
Berkowitz & Kinney
744 Broad Street
Newark, New Jersey 07102

STEVEN J. TRIPP, ESQUIRE
Wilentz, Goldman & Spitzer
900 Route 9, Box 10
Woodbridge, New Jersey 07095

R. JOSEPH FERENCZI, ESQUIRE
1863 Lincoln Highway, Box 363
Edison, New Jersey 08818

SIRS:

PLEASE TAKE NOTICE that the undersigned will move before the Court on Wednesday, April 20, 1983 before the Honorable Dickinson R. Debevoise, at the United States District Court, Federal Courthouse & Post Office Building, Newark, New Jersey, for an Order granting plaintiffs' motion *in limine* seeking to admit into evidence copies of news articles as appended hereto reflecting public perception of the New Jersey Minute of Silence Act, P.L. 1982, Ch. 205, and statements made by various legislators concerning that Act.

The undersigned will rely upon the attached affidavit of Anne McHugh, Esquire and plaintiffs' memorandum of law submitted herewith.

PELLETTIERI, RABSTEIN AND ALTMAN
Attorneys for Plaintiffs
/s/ Richard M. Altman

(Proof of Service omitted in printing)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, individually, et al.,	)	
Plaintiffs,	)	Civil Action No. 83-89
v.	)	
DR. SAUL COOPERMAN, Commissioner of the Department of Education, et al.,	)	AFFIDAVIT OF ANNE McHUGH, ESQUIRE
Defendants.	)	

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

ANNE McHUGH, of full age, being duly sworn, according to law, upon her oath, deposes and says:

1. I am an attorney at law of the State of New Jersey associated with the firm of Pellettieri, Rabstein and Altman, Esquires, 13 West Front Street, Trenton, New Jersey, and am the attorney responsible for the handling of the within matter.

2. I bring this motion in order to have the Court address the question of the admissibility of various news articles, many of which have been attached to plaintiffs' appendix in a prior brief submitted to this Court.

3. Those news articles reflect public opinion as well as statements made by various legislators concerning the purpose, intent and import of P.L. 1982, Ch. 205.

4. Counsel for the defendant Legislature would not stipulate to the accuracy of the statements made and objects to their admissibility. Defendants insist upon cross-examining each and every author of these news articles. Plaintiffs will be put to the burden of subpoenaeing dozens of news reporters in order to verify the accuracy of these statements unless articles are admitted with affidavits of verification or as an exception to the hearsay rule.

5. Plaintiffs would ask the Court to accept an affidavit by news reporters attesting to the accuracy of the quotes from various legislators.

6. Plaintiffs have appended to this motion a computer printout reflecting the various articles and quotes which plaintiffs seek to introduce. See Exhibits A, B and C attached hereto. Copies of these articles are attached hereto as well. Plaintiffs are working under severe time constraints in an effort to meet the deadlines established by the Court, and additional news articles may surface in the course of investigation and plaintiffs would ask the Court to consider them even though they are not yet a part of the within motion. Every effort has been made and is continuing to be made to supply to counsel for the defen-

dant Legislature complete and legible copies of all of the news clippings which plaintiffs intend to introduce.

/s/ Anne McHugh

April 18, 1983
(Notary omitted in printing)

(Exhibits next to Aff'd of Anne McHugh dated April 18, 1983)

EXHIBIT A

Date: 12/14/82
Paper: Courier-Post
By-Line: Freiberg, Nancy
Name Quoted: Adubato
Category: Assembly

Quote: He said he believed the bill was constitutional because it was not mandating prayer. Even if it did, he said, it would have his vote. "Prayer never hurt anyone."

Date: 12/14/82
Paper: Bergen Record
By-Line: Shure, Jon
Name Quoted: Adubato
Category: Assembly

Quote: "I would like to see prayer in our schools, and I admit it. I would like to see a Rabbi and a Priest, and then maybe there wouldn't be so many people becoming Moonies."

Date: 12/14/82
Paper: Trenton Times
By-Line: Goodman, Jim
Name Quoted: Adubato
Category: Assembly

Quote: "When I vote for this override, I'll be saying, 'Thank you' to the parochial schools and 'Thank you' to God."

Date: 12/14/82
Paper: Star-Ledger
By-Line: Seidenstein, Robt
Name Quoted: Adubato
Category: Assembly

Quote: "I would like to see prayer in the school and I admit it." Referring to members of religious cults, he said that if priests and rabbies could go into schools maybe "we wouldn't have so many Moonies." He even made an impassioned plea for funding of parochial schools, before adding, "the truth is that this bill does not mandate prayer. It doesn't have one word about prayer."

Date: 12/14/82
Paper: Trentonian
By-Line: Wilson, Tony
Name Quoted: Adubato
Category: Assembly

Quote: "I wish the bill funded private, parochial education, as well as allowing prayer."

Date: 12/16/82
Paper: Star-Ledger
By-Line: Susi & Seidenstein
Name Quoted: Karcher
Category: Assembly

Quote: "An atheist can contemplate the nonexistence of God" if he wants to, he said.

Date: 12/14/82
Paper: Bergen Record
By-Line: Shure, Jon
Name Quoted: Wolf
Category: Assembly

Quote: "Whether we want to hide behind contemplation or reflection, it's prayer," he said in support of the bill.

Date: 12/14/82
Paper: Star-Ledger
By-Line: Seidenstein, Robt
Name Quoted: Wolf
Category: Assembly

Quote: He supported the bill and was blunt in his assessment of the bill, saying, regardless of "whether we

want to hide behind" the use of the term "contemplation" in the bill, "it's a prayer."

Date: 10/19/82
Paper: Phila Inquirer
By-Line: Tollerson, Ernest
Name Quoted: Zangari
Category: Assembly

Quote: "If it's good for all the grown-ups, why shouldn't it be good for my grandchildren?" he asks in referring to the fact that a prayer is offered when he sits down at a banquet and when he takes his seat in the assembly.

Date: 12/3/82
Paper: Bergen Record
By-Line: Shure, Jon
Name Quoted: Zangari
Category: Assembly

Quote: He said he thought he had refined the bill to make it constitutional and that Kean shouldn't have taken Orechio's remarks into account.

Date: 12/14/82
Paper: Bergen Record
By-Line: Shure, Jon
Name Quoted: Zangari
Category: Assembly

Quote: He urged his colleagues to stick with the bill's wording in the override vote and not read into its intent. "This bill is very, very clear—contemplation or introspection." Zangari, who in the past has sponsored bills calling for prayer, only to have them vetoed by former Gov. Byrne, said he was upset that Kean had interpreted the bill as intending prayer.

Date: 3/18/83
Paper: Home News
By-Line: Breslin, Patrick
Name Quoted: Zangari
Category: Assembly

Quote: He knows some other legislators mentioned that students could pray quietly during the moment of silence. But Zangari said prayer was not the intention of

the law—just a possible byproduct. "All they were saying is, 'What is wrong if a child wants to pray?'" Zangari said.

EXHIBIT B

Date: 10/19/82
Paper: Asbury Park
By-Line: Desando, Bob
Name Quoted: Bassano
Category: Senate

Quote: He said he would vote for a bill to amend the Constitution to allow prayer in the public schools. But he said the Zangari bill is the wrong approach. Although the bill only mentions contemplation and introspection, he said its supporters keep talking about prayer. "I keep hearing the word over and over again. And if that's what it's about, then it's unconstitutional. It makes no difference whether you come in the front door or the back door."

Date: 11/2/82
Paper: Bergen Record
By-Line: Warner, Sue
Name Quoted: Cardinale
Category: Senate

Quote: "There is a large group out there that says there should be something else. Not government dictating religious denominations but something akin to respect, some decorum. There should be some statement by government that we're not atheistic, either. The minute of silence is kind of a compromise among the various groups."

Date: 12/17/82
Paper: Bergen Record
By-Line: Feldman & Yerkes
Name Quoted: Cardinale
Category: Senate

Quote: "This bill says the court won't let us do what the people want, and this is the best we can do."

Date: 12/17/82
Paper: Trenton Times
By-Line: Pollack, Jill
Name Quoted: Dumont
Category: Senate

Quote: "I don't see what harm this bill can do, and I certainly see a great deal of good. I don't think we ought to adhere so devoutly to the separation of church and state and forget that there are other things that are good for us."

Date: 12/17/82
Paper: Bergen Record
By-Line: Feldman & Yerkes
Name Quoted: Dumont
Category: Senate

Quote: "Since the decision of the U.S. Supreme Court, we've seen crime increase and become more rampant. Children have become more disruptive. I can't see where the bill would do any harm, and it might do a great deal of good. I don't think we ought to adhere so closely to the separation of church and state that we forget other things are more important."

Date: 10/19/82
Paper: Trenton Times
By-Line: Goodman, Jim
Name Quoted: Dumont
Category: Senate

Quote: Voted for the bill, asserting that there was no difference between a moment of contemplation in the schools and the prayers used at the start of each session of the Senate.

Date: 1/5/83
Paper: Star-Ledger
By-Line: O'Brien, Tim
Name Quoted: Kennedy
Category: Senate

Quote: "Some of them (students) may be praying (during the minute). I hope so, frankly."

Date: 10/19/82
Paper: Asbury Park
By-Line: Desando, Bob
Name Quoted: Kennedy
Category: Senate

Quote: The founding fathers who battled for freedom of religion and its guarantee in the Bill of Rights are probably "spinning in their graves" at seeing how this right has been "twisted."

Date: 12/17/82
Paper: Home News
By-Line:
Name Quoted: Kennedy
Category: Senate
Quote: "Maybe they're praying. Maybe they're not. Who's to know? Maybe they're praying. I hope so."

Date: 12/17/82
Paper: Star-Ledger
By-Line: Seidenstein, Robt
Name Quoted: Kennedy
Category: Senate
Quote: He said he could not understand why some senators were "so afraid" of a moment of silence. He said no one would know what the students would be thinking. "Some of them may be praying, I hope so, frankly."

Date: 10/19/82
Paper: Star-Ledger
By-Line: Piserchia, Mike
Name Quoted: Kennedy
Category: Senate
Quote: He said the framers of the Constitution are probably "turning over in their graves" over the way the opposing lawmakers are interpreting the First Amendment. "I can't see how this bill would be offensive to anyone. Nowhere does it make one mention to the word 'prayer.'"

Date: 12/17/82
Paper: Trenton Times
By-Line: Pollack, Jill
Name Quoted: Kennedy
Category: Senate
Quote: "There is no constitutional ban against prayer in school. The court has interpreted the Constitution as

banning prayer." He said the founding fathers "never believed that our children couldn't take a moment to stand up and meditate, to think about God and religion." He added that perhaps it was time to put the question before the U.S. Supreme Court again, and that "maybe in the future they will say prayer is one thing and separation of church and state is another."

Date: 12/3/82
Paper: Trenton Times
By-Line: Pollack, Jill
Name Quoted: Kennedy
Category: Senate

Quote: "We're all crazy if we think a moment of silence is going to poison or influence our young people. Let the atheists stand there and think about watching television."

Date: 12/17/82
Paper: Star-Ledger
By-Line: Seidenstein, Robt
Name Quoted: Kennedy
Category: Senate

Quote: "Some of them may be praying, I hope so, frankly."

Date: 10/19/82
Paper: Star-Ledger
By-Line: Piserchia, Mike
Name Quoted: Kennedy
Category: Senate

Quote: The framers of the Constitution are probably "turning over in their graves" over the way the opposing lawmakers are interpreting the First Amendment. "I can't see how this bill would be offensive to anyone. Nowhere does it make one mention to the word 'prayer.' "

Date: 10/19/82
Paper: Trenton Times
By-Line: Goodman, Jim
Name Quoted: Kennedy
Category: Senate

Quote: The "Founding Fathers" would be "turning over in their graves" if they could hear anyone arguing against this legislation.

Date: 12/17/82
Paper: Trenton Times
By-Line: Pollack, Jill
Name Quoted: McManimon
Category: Senate
Quote: He said his original vote in favor of the bill brought him one of the "nastiest" letters he has received as a legislator. "If this is what's happening, maybe we need more of this kind of thing."

Date: 10/19/82
Paper: Trenton Times
By-Line: Goodman, Jim
Name Quoted: McManimon
Category: Senate
Quote: "Look what's happened since school prayer was banished." He said the moments of contemplation "would instill a concept of respect" among school children.

Date: 1/5/83
Paper: Bergen Record
By-Line: Fisher, Harvey
Name Quoted: Orechio
Category: Senate
Quote: When the bill was moving through the legislature, Senate President Carmen Orechio, D-Essex, described it as a way of "bringing prayer back into the schools through the front door."

Date: 10/19/82
Paper: Asbury Park
By-Line: Desando, Bob
Name Quoted: Orechio
Category: Senate
Quote: He acknowledged the bill is designed to bring "prayers back into the school through the front door." He said if there were "more prayer and religion" in the school, there would be fewer problems with the young.

Date: 12/3/82
Paper: Star-Ledger
By-Line: Seidenstein, Robt
Name Quoted: Orechio
Category: Senate

Quote: He said the bill would mean "bringing prayer back into the schools through the front door . . . if we did restore prayer in the schools we would have a lot less problems in our classrooms. This bill will not harm any school-age child. Rather, it will restore faith in his creator."

Date: 10/19/82
Paper: Home News
By-Line: AP
Name Quoted: Orechio
Category: Senate

Quote: "If we had more prayer, we would eliminate many of the problems that still exist."

Date: 10/19/82
Paper: Star-Ledger
By-Line: Piserchia, Mike
Name Quoted: Orechio
Category: Senate

Quote: "If we did restore prayer in the schools, we would have a lot less problems in our classrooms. This bill will not harm any school-age child. Rather, it will restore his faith in his creator."

Date: 12/3/82
Paper: Bergen Record
By-Line: Shure, Jon
Name Quoted: Orechio
Category: Senate

Quote: He was one of those who went public with the bill's unspoken intent when he described it as a way of "bringing prayer back into the schools through the front door." Yesterday he said, "I said that basically to attract votes. Other people saw it another way. I just called it as it is, and I support it."

Date: 10/25/82
Paper: Star-Ledger
By-Line: Seidenstein, Robt.
Name Quoted: Orechio
Category: Senate
Quote: He said the bill's adoption would mean "bringing prayer back into the schools through the front door." During the Senate debate, he said "if we did restore prayer in the schools we would have a lot less problems in our classrooms. This bill will not harm any school-age child. Rather, it will restore his faith in his Creator."

Date: 12/2/82
Paper: Star-Ledger
By-Line: Seidenstein & Susi
Name Quoted: Orechio
Category: Senate
Quote: He said it would mean "bringing prayer back into the schools through the front door."

Date: 10/19/82
Paper: Phila Inquirer
By-Line: Tollerson, Ernest
Name Quoted: Orechio
Category: Senate
Quote: In support of the bill, he said that it would mean "bringing prayer back into the schools through the front door." "Most of our youngsters are well-meaning, are disciplined, don't cause problems for society in general, but I think if we had more prayer, more religion, a lot of the problems that are brought to us by our youngsters would be eliminated and avoided."

Date: 10/19/82
Paper: Star-Ledger
By-Line: Piserchia, Mike
Name Quoted: Orechio
Category: Senate
Quote: "If we did restore prayer in the schools, we would have a lot less problems in our classrooms. This bill will not harm any school-age child. Rather, it will restore his faith in his creator."

Date: 12/23/82
Paper: Trenton Times
By-Line: Pollack, Jill
Name Quoted: Russo
Category: Senate
Quote: ". . . personally, I have serious doubts about whether it is constitutional myself."

Date: 12/3/82
Paper: Phila Inquirer
By-Line: Weiner, Tim
Name Quoted: Zane
Category: Senate
Quote: "I think (Zangari's bill) is a good idea. We begin our Senate sessions with prayers offered by clergymen of different denominations each and every time. So does each municipality throughout the state. I don't think it's wrong to have that kind of example for children in school."

EXHIBIT C

Date: 1/20/83
Paper: Home News
By-Line:
Name Quoted: Editorial
Category: Public
Quote: "That poorly disguised—and unconstitutional —way of reintroducing prayer in public schools was created over the most strenuous and well-advised objections of many responsible people including Gov. Thomas Kean, Attorney General Irwin I. Kimmelman and education Commissioner Saul Cooperman."

Date: 1/13/83
Paper: Central Post
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "... throughout history many have been harmed by the good intentions of religious people who have sought to impose their notions on others ... demanding (a moment of silence) in a public institution in the name of religion is surely a step along a path fraught with peril."

Date: 12/21/82
Paper: Trentonian
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "Governor Kean correctly observed that the use of the word 'meditation' is merely a subterfuge to circumvent repeated court mandates against prayer in public schools. Any suggestion to the contrary is a hypocritical lie ... the introduction of such a bill put pressure on other legislators to support it, or risk appearing to constituents as being against prayer."

Date: 1/14/83
Paper: Trentonian
By-Line: Herrick, Frank
Name Quoted: Editorial
Category: Public

Quote: "... It is a continuance of an effort to insure that government, and any government supported program, has absolutely no say or control over what or how religion is observed."

Date: 1/11/83
Paper: Courier-News
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "It was irresponsible for the legislature, having before it a history of recent court rulings showing its plan to be unacceptable and having been refused enforcement power by the governor of the state, to persist in completing its exercise ... now it will be up to Judge Debevoise to correct the legislature's mistake and throw out the requirement of a minute of silence. Those who

want to start their day with a prayer will still be free to do so, but the heavy hand of the legislature will be lifted from the schools."

Date:
Paper: Daily Princetonian
By-Line: Robinson, Bert
Name Quoted: Editorial
Category: Public

Quote: "The word 'prayer' would have been the bill's kiss of death. The phrase 'quiet and private contemplation or introspection' is much sneakier. The supporters of the minute of silence may be crazy, but they aren't stupid."

Date: 1/24/83
Paper: Star-Ledger
By-Line: Fulton, Edithe
Name Quoted: Fulton
Category: Public

Quote: "Prayer soothes, inspires, gives hope, brings peace of mind, yet the mere mention of it can cause legislation and litigation. The latest example is the new state law requiring the public schools to offer students a moment of silence at the start of each day." (Edithe A. Fulton, president, NJ Education Assn)

Date: 1/21/83
Paper: Newsday
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "There is an understandable suspicion among opponents of the minute of silence that it's a device designed to circumvent legal prohibitions against prayer in the schools. After all, if no religious purpose is intended, what serious secular purpose is intended, what serious secular benefit can be derived from 60 seconds of silence mandated by law and conducted under specified circumstances at specified times?"

Date: 1/9/83
Paper: Bergen Record
By-Line: Fisher, Harvey
Name Quoted: Boyle
Category: Public
Quote: He contends the schools should be kept free of anything smacking of religion. "The schools should not be in the middle of something like this." (Charles Boyle, Edison Superintendent of Schools)

Date: 1/9/83
Paper: Bergen Record
By-Line: Fisher, Harvey
Name Quoted: Yelenscics
Category: Public
Quote: "The moment of silence pays respect to God. In a way it replaces a prayer." (Anthony Yelenscics, Edison Mayor)

Date: /1/9/83
Paper: Bergen Record
By-Line: Fisher, Harvey
Name Quoted: Bright
Category: Public
Quote: "It's a step toward getting prayer back into the public schools, and I don't think religion has any place in the public schools." (Molly Bright, John F. Stevens High School Librarian)

Date: 1/8/83
Paper: Courier-News
By-Line: Beyrau, Caroline
Name Quoted: Anonymous
Category: Public
Quote: "If they want to pray, they can do it any time during the day. They don't need a special moment." (Hillsborough High School Senior)

Date: 1/8/83
Paper: Courier-News
By-Line: Beyrau, Caroline
Name Quoted: German
Category: Public

Quote: She said she disliked the law because of its religious implications. "I think it stinks, I'm not going to a catholic school, I'm going to a public school." (Sheryl German, Piscataway 9th Grader)

Date: 1/11/83
Paper: Star-Ledger
By-Line:
Name Quoted: Shepard
Category: Public
Quote: "We're talking about morality." (John Shepard, Old Bridge Board of Education President)

Date: 1/11/83
Paper: Bergen Record
By-Line: Light & O'Brien
Name Quoted: Insley
Category: Public
Quote: "It's a backdoor way of getting prayer back into the school." (Larry Insley, Teacher, Bogota High School)

Date: 1/11/83
Paper: Bergen Record
By-Line: Light & O'Brien
Name Quoted: Kaufmann
Category: Public
Quote: " . . . they're mixing church and state." Judy Kaufmann, 18 yrs. old, senior, Bogota High School)

Date: 1/11/83
Paper: Bergen Record
By-Line: Light & O'Brien
Name Quoted: Leara
Category: Public
Quote: "I hear it's because they want to get religion back in the schools. People aren't getting anything out of it. If they want us to pray, people can do it on their own time." (Lisa Leara, 18 yrs. old, Senior, Bogota High School)

Date: 1/11/83
Paper: Bergen Record
By-Line: Light & O'Brien
Name Quoted: Dreyer
Category: Public
Quote: "I think it's stupid. It doesn't belong in schools. They don't want religion and the state to intermingle, but it does." (Chris Dreyer, 17 yrs. old, Senior, Bogota High School)

Date: 1/11/83
Paper: Home News
By-Line: Edelman, Renee
Name Quoted: Wilfond
Category: Public
Quote: About 35 students of John P. Stevens High School in Edison protested in a statement read to the school board by Spokesman David Wilfond: the "legislative intent of the law is to re-establish prayer in the public schools . . . contemplation, as defined by the unabridged Webster's International Dictionary, is prayer."

Date: 1/9/83
Paper: Phila Inquirer
By-Line: Maykuth, Andrew
Name Quoted: Keyek
Category: Public
Quote: Several Audubon parents telephones School Superintendent Eugene Keyek, angry that their children would be compelle to engage in what they considered a religious exercise.

Date: 1/7/83
Paper: N Y Times
By-Line: Norman, Michael
Name Quoted: Connolly
Category: Public
Quote: "For me I have to be alone to pray. I can't concentrate on God when there's all these people around. There's no law that says everyone has to be quiet." (Sharon Connolly, 17 yrs. old, James Caldwell High School, West Caldwell)

Date: 1/7/83
Paper: N Y Times
By-Line: Norman, Michael
Name Quoted: Woudenberg
Category: Public
Quote: "I see this as an ominous intrusion by the religionists." (Richard Woudenberg, Teacher, James Caldwell High School, West Caldwell)

Date: 12/20/82
Paper:
By-Line: Gil, Gideon
Name Quoted: Oravsky
Category: Public
Quote: "They shouldn't make you pray in public if you don't want to." (Cheryl Oravsky, 16 yrs. old, Junior at Nottingham High School, Hamilton)

Date: 12/21/82
Paper: Courier News
By-Line:
Name Quoted: Editorial
Category: Public
Quote: " . . . the statements of some of the bill's backers make it clear that a desire to return prayer to the schools is an important motivation behind the move. It's time for people to accept that the separation of religion and state has been recognized by the courts as an integral part of the Constitution, and for efforts to sneak around that stricture to cease."

Date: 1/12/83
Paper: Trenton Times
By-Line: Blaze, Harry
Name Quoted: Editorial
Category: Public
Quote: "It is not surprising that the opponents of the 'silence' law say it is an unconstitutional intrusion of religion in the schools because it clearly suggests that the moment of silence is to replace the prayers that once were said in schoolrooms all across the land."

Date: 3/7/83
Paper: Star-Ledger
By-Line: Letter to Editor
Name Quoted: Cueva
Category: Public
Quote: "The moment of silence is just a stepping stone for prayer in our schools. . . . I also feel that religion and prayer are things that should take place either in the home or church and not in a place to learn." (Andrew Cueva, 7th Grade, Belleville Middle School, Belleville)

Date: 12/21/82
Paper: N Y Times
By-Line:
Name Quoted: Editorial
Category: Public
Quote: "The Governor's lawyer is surely right about the law's purpose, as betrayed by legislators in floor debate. It is a disguised attempt to 'bring prayer back through the front door,' as one Senator put it . . . . why not get out of the business of legislating public morality and repeal this deceptive little law? If it were found constitutional, that would be only because the legislature has trivialized religion by disguising it."

Date: 12/21/82
Paper: Bergen Record
By-Line: Letter to Editor
Name Quoted: Chuman
Category: Public
Quote: "The bill is an attempt to circumvent the Constitution and bring back prayer to the schools by calling it something else. The bill's sponsors make no effort to disguise that fact. One sponsor, Assemblyman James Zangari, told me explicitly that he saw his bill as a first step toward restoring prayer to the public schools and that he hoped that bible-reading would follow. He said, 'prayer never did me any harm.'" (Joseph Chuman, Ethical Culture Society of Bergen County, Teaneck)

Date: 12/27/82
Paper: Star-Ledger
By-Line: Letter to Editor
Name Quoted: McCauley
Category: Public
Quote: "The founding fathers would have vomited at the thought of introducing a 'moment of silence' to the public school curriculum. I trust that the New Jersey Supreme Court will also." (Donald J. McCauley, Clifton)

Date: 12/27/82
Paper: Star-Ledger
By-Line: Letter to editor
Name Quoted: Stein
Category: Public
Quote: " . . . we should wonder why our legislature is concerned with bogus issues like prayer in schools when we have more important issues . . . to worry about. Meditation is more appropriate in the home or house of religious worship—not in my school. My parents pay taxes for me to learn in school—they do not pay for me to pray!" (Sheryl Stein, Toms River)

Date: 12/21/82
Paper: Star-Ledger
By-Line:
Name Quoted: Editorial
Category: Public
Quote: "The new statute has been widely interpreted as a subterfuge, an evasive statutory maneuver to get around the constitutional strieture. Whether verbal or silent, a prescribed daily ritual has obvious religious overtones, a view shared by Gov. Thomas Kean and Federal Judge Harold Ackerman. . . . Sen. Orechio was quoted as saying that the law would bring 'prayer back into the schools through the front door.' The senate leader's candor would appear to remove any residual doubts over the intent of the law, despite other statements to the contrary."

Date: 10/21/82
Paper: Courier-Post
By-Line:
Name Quoted: Editorial
Category: Public

Quote: " . . . the legislators labored mightily to recapture the good old days that never were by rewriting the constitution: school prayer with a wink . . . . it is—as openly conceded by Senate President Carmen Orechio, D-Essex, a back-door school-prayer bill . . . . its intent is clearly to circumvent the constitutional prohibition against state establishment of religion."

Date: 10/22/82
Paper: Trentonian
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "They've been at it again this week, arguing about a mandatory school meditation (spell p-r-a-y-e-r) period that has been struck down repeatedly by state and federal courts. . . . The few lawmakers courageous enough to resist such pushes recognize that the maneuvers are merely a devious attempt to circumvent constitutional bans on school prayer."

Date: 12/6/82
Paper: Trenton Times
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "Gov. Thomas H. Kean was precisely correct in his veto of the 'minute of silence' bill. He cited the legislative history of the bill, which clearly showed that, although the legislature was talking silence, it meant prayer . . . . as if to prove Kean was right, Sen. Brian Kennedy, R-Monmouth, who objected to the veto, said, 'let atheists stand there and think about watching television.' Kennedy clearly implied that others would be praying."

Date: 10/28/82
Paper: Bergen Record
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "The state assembly dares not call it prayer, but last week, by a margin of 62-9, it voted to allow a one-minute 'meditation' in public schools . . . . four years ago, the legislature passed a bill calling for a minute of 'silence' in New Jersey schools. Fortunately, former Gov. Brendan Byrne was not fooled by the euphemism and vetoed it on constitutional grounds. Now the lawmakers, led once more by Assemblyman James Zangari of Irvington, have another name for it—meditation. But Mr. Zangari himself admits that he doesn't see anything wrong (continued)

Date: 10/28/82
Paper: Bergen Record
By-Line:
Name Quoted: Editorial
Category: Public
Quote: (continued) with a little prayer in the schools. 'No one should ever be coerced to take part in a religious exercise, but neither should it be forbidden.' "

Date: 10/20/82
Paper: Trenton Times
By-Line:
Name Quoted: Editorial
Category: Public
Quote: " 'Look at what has happened since school prayer was banished,' exclaimed Sen. Francis McManimon, D-Hamilton. in an exclamation that managed to combine bad history with a non sequitur and give away the whole game."

Date: 10/20/82
Paper: Trenton Times
By-Line:
Name Quoted: Editorial
Category: Public
Quote: "Requiring schooldays to start with one minute of silence is the legislature's way of passing a law forcing school children to start the day with a prayer. School prayer is patently unconstitutional, of course, so

supporters of 60 seconds of silence passed the next best thing, a school prayer bill that doesn't mention praying. The legislative history of the silence bill—something the courts are sure to look at—is that it began with the intent of forcing prayers into the classroom, and it wound up with the intent of smuggling them in."

Date: 12/6/82
Paper: Bergen Record
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "The measure . . . didn't say so outright, but its intent was clearly to brink back prayer in the schools. Some of its supporters said as much. . . . Calling prayer by another name—meditation or a 'moment of silence,' as the legislature suggested four years ago—does not change the nature, or the unconstitutionality, or the exercise."

Date: 12:16:82
Paper: Atlantic City Press
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "The 'minute of silence' bill is one more attempt to circumvent a Supreme Sourt ruling that established prayer in public school as an unconstitutional mix of church and state."

Date: 11/1/82
Paper: Star-Ledger
By-Line:
Name Quoted: Editorial
Category: Public

Quote: "The conclusion remains inescapable: Prayer in the school is not permitted and calling prayer meditation or reflection or any one of a thousand euphemisms does not alter the situation."

Date: 10/29/82
Paper: Star-Ledger
By-Line: Braun, Robt J
Name Quoted: Editorial
Category: Public
Quote: "It clearly is an effort to reintroduce prayer —and, for good or ill, that issue has been resolved by the U.S. Supreme Court. The road chosen by the legislature creates the unseemly spectacle of theoretically responsible adults trying to play a semantic trick on constitutional law." "Youngsters will ask questions about this moment of silence. . . . They will learn the whole point is to reintroduce prayer by pretending they are not being asked to pray."

Date: 12/19/82
Paper: Star-Ledger
By-Line: Maske, Monica
Name Quoted: Peterson
Category: Public
Quote: The legislature is "trying to get religion into the public schools." (Dave Peterson—Senior, Lawrence High School.)

Date: 12/19/82
Paper: Star-Ledger
By-Line: Maske, Monica
Name Quoted: Nissen
Category: Public
Quote: It sounds like "another way to say 'let's have a prayer.'" (Jennifer Nissen—Lawrence High School.)

Date: 12/19/82
Paper: Star-Ledger
By-Line: Maske, Monica
Name Quoted: Cegan
Category: Public
Quote: "All the kids were talking about it. My friend, Debbie, said we were going to have a moment of prayer. Everyone was saying it was prayer, and every-

one was saying it was dumb. My protestant friend said she doesn't go to church so why should she pray in public school." (Cynthia Cogan—Maplewood Middle School.)

Date: 12/19/82
Paper: Bergen Record
By-Line: Auster & Fisher
Name Quoted: Cipolaro
Category: Public

Quote: He called the bill a "misguided" attempt to revive school prayer. (Enrico Cipolaro—Pompton Lakes School Superintendent.)

Date: 12/19/82
Paper: Bergen Record
By-Line: Auster & Fisher
Name Quoted: Bial
Category: Public

Quote: "I think the moment of silence is directly related to prayer, and church should be separate from state." (Debbie Bial—Senior, Teaneck High School.)

Date:
Paper: Home News
By-Line: Diegmmueller, Karen
Name Quoted: Juskow
Category: Public

Quote: She believes the measure violates the separation of church and state. "Prayer should definitely not be in the school." (Beth Juskow—John P. Stevens High School, Edison.)

Date:
Paper: Home News
By-Line: Diegmueller, Karen
Name Quoted: Levine
Category: Public

Quote: She believes the minute of silence is but the first step to prayer. (Monica Levine, 17 yrs. old, John P. Stevens High School, Edison.)

Date:
Paper: Home News
By-Line: Diegmueller, Karen
Name Quoted: Cash, Wm
Category: Public
Quote: "I personally think that it's bringing back prayer to school." (William Cash—Senior, John P. Stevens High School, Edison.)

Date: 1/2/83
Paper: Phila Inquirer
By-Line: Tollerson, Ernest
Name Quoted: Redlich
Category: Public
Quote: "I think the history of the whole New Jersey legislature picture is that bring state-sanctioned prayer into the public schools." (Norman Redlich—Dean, New York Univ Law School—testified against Helms legislation in Senate Judiciary Committee.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JEFFREY MAY, et al.,	)	
	)	Civil No.
Plaintiff,	)	83-89
	)	
v.	)	TRANSCRIPT OF
	)	PROCEEDINGS
DR. SAUL COOPERMAN, et al.,	)	
	)	
Defendants.	)	

Newark, New Jersey
April 20, 1983

BEFORE:

HONORABLE DICKINSON R. DEBEVOISE, U.S.D.J.

Appearances:

PELLETTIERI, RABSTEIN & ALTMAN, ESQS.,
BY: RICHARD ALTMAN, ESQ.,

and

STEPHEN LATIMER, ESQ.,

For the Plaintiff
HANNOCH, WEISMAN, STERN, BESSER,
BERKOWITZ & KINNEY, ESQS.,
BY: WILLIAM W. ROBERTSON, ESQ.,

and

RALPH J. MARRA, JR., ESQ.,

and

ROBERT P. ZOLLER, ESQ.,

MARINARI & FARKAS, ESQS.,

BY: LAWRENCE T. MARINARI, ESQ.,
For the General Assembly

(p. 2) THE COURT: I've read your papers. I have a pretty good idea of what your basic contentions are.

I give you each about ten or 12 minutes, and I'll put an opinion on the record. You can respond to whatever you don't think was responded to in your brief, or bring out anything of major significance. I think it's pretty straightforward.

MR. ALTMAN: Richard Altman, Pellettiere, Rabstein and Altman, counsel for plaintiffs.

Your Honor, I agree that the matter is fairly straightforward, although I think the defense has artfully made the proposition here a little bit more confusing than might otherwise be. I would like to put it in its proper factual context for about a moment or two.

We are seeking to introduce by way of newspaper articles evidence of the legislators' purpose in enacting this Moment of Silence statute to meet—persuade the Court that the statute doesn't meet the first prong of the test in determining whether or not this statute violates the establishment clause.

We have at this date approximately 100 articles by various authors around—that have been published in papers throughout the state of New Jersey. My understanding is that those articles continue to come in as we move south. We have begun in North Jersey and Central Jersey.

(p. 3) The interesting thing about the articles is that they are uniform and consistent throughout the state in that whether it be quotations of legislators, particular legislators that were very active in the passage of this bill, many of whom were co-sponsors of the bill, or lead-

ing in the Senate and Assembly, or whether it be comments by editorial writers, the opinion of editorial writers, or it be third parties writing letters to the editors.

One thing is consistently clear throughout that the public debate; whether people are for this statute or against the statute, whether they are for prayer in the public school or against it, they are uniform in that that is the issue being debated.

THE COURT: Yes. Don't you think it makes a difference whether these articles are before or after enactment of the legislation with respect to the purpose for which they would be admissible?

MR. ALTMAN: No, I don't. Of course, we have to break that down again as to whether or not arguably we are offering it for purpose or for effect.

THE COURT: Well, which are you offering it for?

MR. ALTMAN: I'm offering it for both, and that's one reason I would say I would make no distinction as to whether the statements were contemporaneous statements.

For the most part, I believe the statements by (p. 4) the legislators are contemporaneous statements with the development and passage of the bill.

THE COURT: That would go to purpose.

MR. ALTMAN: And that would go to purpose.

THE COURT: What they say afterwards wouldn't necessarily go to purpose.

MR. ALTMAN: No, I would agree with that. We wouldn't be offering them if they were self-serving or disavowals of their purpose or the purpose that we easily

glean from their prior remarks, and that is to put prayer back in the public school.

That's precisely why we argue under the standard of reliability and trustworthiness, and the exception to the federal hearsay rule under Section 24 of Rule 803, we suggest the Court ought to allow the admission of this evidence by way of newspaper articles without the necessity of bringing in 50 to a hundred different authors, many of whom we have contacted, and indicated to us that they would move to quash, even if there was no legitimate basis for moving to quash.

THE COURT: Well, they would get very short shrift.

MR. ALTMAN: I believe that as well.

THE COURT: There is no confidential source or privilege here that I can see. They would be arguing burdensomeness, I suppose. That's for another day.

(p. 5) MR. ALTMAN: That's right.

THE COURT: But just for those who are present, which I fail to see the basis for, if it was a legitimate need for their presence, at the risk of raising the wrath of the press.

MR. ALTMAN: We were rather confident your Honor would perceive that issue in that manner, but our problem still remains that if it were required to bring in these newspaper persons from all around the state, there is a substantial expense incurred by the ACLU, which it can ill afford.

Two, we are going to take considerable court time and time of counsel, which I don't think is necessary in the

context of this case. Because I think in the context, the statements we are offering have circumstantial guarantees of trustworthiness and reliability.

I think it is unreasonable to require us to endeavor to produce the actual newspapermen when we have such circumstantial guarantees of trustworthiness.

I say that because all of the stories are uniform. No one quotes, for example, Assemblyman or Senator Kennedy, or Adubato or Orechio about their purpose for the introduction of the legislature, and says different things.

We'll have different reporters in five different papers saying the same thing he said.

(p. 6) If we had a discrepancy, I would say there is a suggestion, a question about the reliability of the statement, whether it was said or not.

But we don't have that. It is uniform throughout these articles as to what the men are quoted as saying.

Secondly, which I suggest makes it very unreasonable for us to be burdened with bringing in these people, is there is no denial that they made the statements.

The legislators have intervened with the permission of the Court. They were not defendants in this action. They have voluntarily chosen to come in and defend.

They sought the protection of the Court, and the Court entered a protective order authorizing them or barring the plaintiff from requiring the legislators to either admit or to deny the truth as to whether or not they made the statements.

THE COURT: I insulated them from all discovery.

MR. ALTMAN: That is correct. And I would assume that in line with the arguments that were made, although your Honor never made a determination per se based upon their claim of privilege, that the Court's opinion would extend to precluding us from suboenaing these individuals into court for them to either admit or deny.

THE COURT: I don't understand what the computer printouts are.

(p. 7) MR. ALTMAN: The computer printout is just to show, in line with the rule itself, 803(24), to show exactly what we intended to introduce.

This gives the statements themselves, the dates that they were made, the newspaper in which they were found, the individual being quoted, to give the Court an idea as to the type of—not just an idea, but precisely the quotations that would be offered in evidence and to give notice to counsel for the intervenor-defendants as to what we intend to offer.

THE COURT: Was this derived from the articles in the yellow folders?

MR. ALTMAN: Yes. It is my understanding that the Court has been supplied with copies of all the articles that we intended to introduce.

THE COURT: And the defendants have been supplied with that.

MR. ALTMAN: That's correct.

THE COURT: This merely is summary. The printouts are summaries from these basic articles for convenience.

MR. ALTMAN: Yes. I think it pulls out the key language, the key quotes that we think are evidential by their purpose or effect.

THE COURT: What's the difference between A, B (p. 8) and C? You have three different collections.

MR. ALTMAN: A is the legislators. B are the editorial writers or commentators discussing the subject. C—B meaning the editorial writers, commentators, part of the press, working for the papers.

THE COURT: Yes.

MR. ALTMAN: C goes to third-party statements, letters to the editors by members of the public, whether they be students or teachers, commenting on their perceptions of this particular legislation.

THE COURT: Well, you would agree, would you not, that the statement in the newspapers of what the legislators said is hearsay?

MR. ALTMAN: Well, it's hearsay. I suggest it comes within exceptions.

THE COURT: So there is no question but that it would be hearsay, if you're admitting it for the purpose of showing what the legislators said.

MR. ALTMAN: In the form of the newspaper articles. If it was in the form of a newspaperman and the legislators' statements are admissions under the federal rules, we don't technically classify them any longer as hearsay.

THE COURT: Well, it depends on whether you consider legislative parties technically parties to the (p. 9) action. I don't know whether they are or not.

Well, all right.

MR. ALTMAN: Either way, whether it's hearsay, I think that clearly that type of statement would be in line with the traditional admission under the hearsay exception.

THE COURT: All right.

MR. ALTMAN: But I think the key thing here is whether we pinpoint a particular exception to the rule, such as we used to refer to admisisons or what have you, when we look to 803(24), and we bear in mind that on the question of hearsay, the courts look to basically the test is trustworthiness and reliability, and we know that the public debate in the state, ever since they attempted to pass this and put it through, and through the process of the veto and the override, has been uniformly statements by these legislators that they intended this for—to be a religious exercise, to be a way of circumventing the federal Constitution.

If there was a serious debate as to the truth that was there statements, that they made statements, not that that was the purpose, but those were the statements they made, I would recognize that we woul dhave to proceed by way of other than hearsay. I wouldn't ask the Court to excuse us from the burden of producing the newspapermen, for example.

But they have neither denied the truth of the (p. 10) statements—and we have been handicapped in that regard because we are not permitted to get a—a demand for admission. And I think it would require us to put

blinders on and the Court to put blinders on for us to believe that this isn't precisely what they said.

There has been no genuine denial. There has been no circumstantial denial that these statements were made.

For that reason I say that we should look to the Section 24 of 803, the Court shall permit the introduction.

I will bear in mind if we had an affidavit from a legislator denying he made a statement, then I would readily agree we better produce somebody under oath and subject to cross-examination to say that he made that statement.

THE COURT: All right. Thank you very much.

Mr. Robertson.

MR. ROBERTSON: Judge, as an anticipatory point, I just have to note that I was under, as my letter indicated, a misimpression. I did not understand that there would be a whole host of editorial and third-party comments that are being offered.

I talked to Miss McHugh on the 12th. She indicated, as I indicated in my letter, that the material to be offered was essentially the material annexed to their submission that was submitted to you in January.

THE COURT: That's the more difficult material, (p. 11) because that's the hearsay.

MR. ROBERTSON: I agree, Judge. There are a whole host of problems, not only in the hearsay area, but in the area of 701 and 702, opinion evidence and our inability to examine the basis of the opinion being offered by the lay witness, whether that be an editor who has written an editorial, whether that be a letter to the editor, and I would

also point out that there is in no circumstances—and again, I'm not ready to explore it completely—absolutely no showing of any necessity for these people—these people are not —if we characterize the legislators as being the type of people that Mr. Altman can't talk to—can't bring them in.

THE COURT: No. You created a bar. You've raised the privilege.

MR. ROBERTSON: Absolutely.

THE COURT: I'm not saying a privilege, but at least I'm saying for the reasons you have suggested, they are exempted from discovery. So you've closed doors, the normal avenues of access to this information.

MR. ROBERTSON: Let me address that directly.

THE COURT: Yes.

MR. ROBERTSON: I know of no rule of law, and I have found no case that says a person who raises a privilege subjects himself to wholly inadmissible hearsay evidence.

THE COURT: You're begging the question. The (p. 12) question is whether it's inadmsisible.

Are you claiming these statements were not made?

MR. ROBERTSON: Judge, I am not in a position to tell you that these statements were not made. I am in the position—

THE COURT: Then you're not talking to your clients. They can either tell you these are false or these are true.

MR. ROBERTSON: I am in the position to tell you that of the legislators we have contacted, and of the staff

members we have contacted, these statements are taken wholly out of context.

They are fragment utterances of legislators during the heat of public debate, not over the course of one isolated session, but during the course of a whole host of sessions.

The comments themselves may be, and I detect that in some of the articles, misconstrued and directed towards other legislation.

Example, at the time that Mr. Zangari proposed the minute of silence or the Moment of Silence legislation regionally, it was a three-minute bill.

At the same time, in the same session, he had a bill that called for an opportunity to read Bibles and say prayers on public school grounds.

(p. 13) In one of the articles it's abundantly clear that the reporter has confused remarks going to the second bill as going to the first bill.

Now, I have not sorted those all out.

THE COURT: He may want to waive his rights and subject himself to testimony and come in and talk himself.

MR. ROBERTSON: Absolutely not.

THE COURT: All right, then he has to live with it. He can't have it both ways.

MR. ROBERTSON: He can have it both ways, and it is not both ways.

THE COURT: He's not going to get it.

MR. ROBERTSON: It is totally consistent with the privilege we have raised.

THE COURT: It is not a privilege. Let's stop talking about a privilege.

MR. ROBERTSON: Then I wanted one other point made.

THE COURT: Yes.

MR. ROBERTSON: Because I think this is a critical time in this proceeding.

If your Honor is holding that there is no privilege, then I wish your Honor would hold that clearly and unequivocally so that we may take an interlocutory appeal.

THE COURT: No. You've got your order. They are (p. 14) protected under Federal Rules of Civil Procedure. I have said that they have claimed that it is a burdensome thing for a legislator to have to come out and answer for his every act and I agree. They shouldn't have to do that.

But that's not an absolute privilege.

MR. ROBERTSON: Let me not get us off the prong.

THE COURT: Yes.

MR. ROBERTSON: I maintained clearly, as I've written in my submission to your Honor, that admitting this material, even if it were reliable, would violate the privilege.

THE COURT: That's just absurd. If you look at the New Jersey cases, which refer to what legislators say all the time, New Jersey has found no privilege. And if they have found no privilege to refer to what they set, why should the federal courts invent a privilege?

MR. ROBERTSON: I fully agree with you. New Jersey has not found the privilege because the issue has never been presented to those judges.

THE COURT: Oh, that's ridiculous. The federal courts have quoted what legislators have said time and time again.

You're taking things totally out of context. This is to hold a legislator, a federal congressional legislator criminally liable for things he has said.

(p. 15) This is no attempt to do that here.

MR. ROBERTSON: Judge, I respectfully disagree with you. I have not taken them out of context. No court that you can point to, nor the plaintiffs have cited you to, has addressed the issue we have raised.

THE COURT: That's because it is so outside the realm of reason.

MR. ROBERTSON: As you have observed quote, unquote the last time, it is unique and has not been raised.

THE COURT: All right, go ahead.

MR. ROBERTSON: Two other prongs to our argument. Let's go to the most rudimentary prong, and that is the prong of hearsay.

Mr. Altman has candidly admitted now that these utterances are being offered for the truth of the matters asserted therein.

THE COURT: Only partly. And that's only to the extent that they are trying to establish what the legislators said.

MR. ROBERTSON: I agree.

THE COURT: That is hearsay.

MR. ROBERTSON: That is hearsay.

THE COURT: But it is not hearsay if you take this whole mass of material as evidence of what the public was being exposed to. True or not, whether the legislators said (p. 16) it or not, this is what they are being exposed to for the effect of the legislation. That's not hearsay.

MR. ROBERTSON: I'm not going to take an irresponsible position.

THE COURT: I'm sure you never would.

MR. ROBERTSON: As I had pointed out in my brief, Miss McHugh has asked for a stipulation as to authenticity.

THE COURT: No problem, because they are self-authenticating.

MR. ROBERTSON: There is a self-authenticating rule.

THE COURT: We don't need that.

MR. ROBERTSON: But what we have is a problem of authentic what.

THE COURT: Of what the newspapers said and what the public read.

MR. ROBERTSON: Oh. The public has read reports of statements.

THE COURT: Yes.

MR. ROBERTSON: Now, if there is a test under the establishment clause that says what the public perceives shall control, whether that's accurate or not, then I will yield.

THE COURT: It doesn't control, but it is evidential.

MR. ROBERTSON: No. The prong, I said, whether (p. 17) it's accurate or not, I will yield. I will concede. There is no such test.

THE COURT: No test of what?

MR. ROBERTSON: There is no such test that that type of public perception is evidential or relevant to the very difficult inquiry and determination that your Honor must make.

THE COURT: It's very clearly relevant. There are three things that I have to look to, the purpose of the legislation, the effect of this legislation, and whether it involves an entanglement.

MR. ROBERTSON: That's correct.

THE COURT: What the public perceives as the purpose of the legislation and the effect is very material to what the effect will be.

MR. ROBERTSON: Judge, that is an inference, and I believe that is a leap of faith, that no case that your Honor is familiar with—and I know your Honor does his homework—has held as such.

THE COURT: I disagree.

MR. ROBERTSON: In due respect, what your Honor is confusing is the likelihood for political dissention along

religiously fragmented lines. That, sir, is not a prong of the effect test.

THE COURT: I'm just simply asking, what does the (p. 18) public perceive this to be?

MR. ROBERTSON: The test is not what the public perceives it to be. The test is whether the act has the effect of advancing or inhibiting religion, not what people subjectively believe it will do, but what, in fact, it does.

THE COURT: Yes, but what they believe it will do will have a very material effect upon what it does do.

MR. ROBERTSON: And I say again, that is a leap of faith.

THE COURT: I disagree. I say it is a rational conclusion.

MR. ROBERTSON: Let's get back to what we are talking about on the application here.

Mr. Altman has been candid. This is being offered for the purpose test, the purpose.

THE COURT: That's one of the things.

MR. ROBERTSON: Judge, I'm going to yield. I agree it is also being offered as the effect test that's really more your Honor's concept than it is the plaintiffs, but the plaintiffs have adopted it. Let me just focus on purpose.

THE COURT: All right.

MR. ROBERTSON: The purpose test under the establishment clause requires that the statute have a secular legislative purpose. That's important to focus upon.

(p. 19) THE COURT: Primarily.

MR. ROBERTSON: Judge, if you look at Nyquist, you look at Larkin, it goes something like this; primarily, clearly, just plain legislative secular purpose. I recommend to your Honor that I cannot resolve the different adjectives used.

There does not seem to be any explanation in Justice Burger's different formulation of the test. He has formulated it three different ways.

Clearly, primarily, or just plain.

THE COURT: All right, that gives us the general idea of what he's driving at.

MR. ROBERTSON: I agree. It does give us the general idea of what he's looking for.

That does not require any evidence of legislator motivation, none at all.

THE COURT: I'm not talking about motivation. It's the purpose of the statute.

MR. ROBERTSON: That does not require any examination of the utterances of political entities during the course of debate.

THE COURT: Congress debate, Congress records have been referred to frequently by the Supreme Court and other respected institutions of the judiciary for determining what the purpose of legislation is.

(p. 20) MR. ROBERTSON: Absolutely referred to, very hesitantly, and in very limited cases, as an aid to interpreting inescapable, ambiguous language.

THE COURT: That's different. This is not interpreting ambiguous language. The language is very clear.

MR. ROBERTSON: If your Honor is saying the Supreme Court has referred to selected floor debate comments of less than a handful of legislators to vary, alter or contradict the terms of a statute, I say that is not true.

THE COURT: There is no contradiction of a statute here. It is going to be applied or it isn't going to be applied exactly as it is written.

I don't see any ambiguity in the language of the statute whatsoever.

MR. ROBERTSON: Then I submit to your Honor there is no reason for you to go behind the words of the statute. The plaintiffs—

THE COURT: I would submit you are in error, because that is not the problem in this case. The problem is what is the purpose of this statute.

MR. ROBERTSON: Judge, the purpose of this statute can be drawn from the language itself.

THE COURT: No.

MR. ROBERTSON: Now your Honor is being, I think, misled, and it is a very attractive opportunity. By reference (p. 21) to the civil rights cases, the voting rights cases, where purpose has always been a legitimate inquiry.

THE COURT: This is a civil rights case.

MR. ROBERTSON: Civil rights, voting rights, racial discrimination cases.

I submit to your Honor that conceptually we are talking about two different types of inquiries. Let's just focus on that for a second.

In the area of racial discrimination, an inequity, in effect, is insufficient as a matter of law to show that the act is violative of the equal protection clause.

THE COURT: I don't understand what you're saying.

MR. ROBERTSON: Judge, if we have a statute that has the effect of acting unequally upon groups, one group being a minority group, that the courts have said is not itself sufficient to show that statute violates the equal protection clause.

The plaintiffs must additionally show—

THE COURT: My silence must not be accepted as accepting your views.

MR. ROBERTSON: I agree. I appreciate the opportunity to develop the concept that I'm trying to have the Court focus on.

The plaintiffs in those cases are put under an (p. 22) additional enormous burden of having to show that that inequal or unequal effect is motivated by impermissible racial considerations.

In those cases the Court has entertained evidence—I think it is unfair that I should be cut off by the fire bell.

THE COURT: Your 15 minutes is up.

MR. ROBERTSON: Was it a part and parcel of a racial motivation? That's clear. And I submit to your Honor it is clear if you examine those cases critically, that when they place the plaintiffs under a wholly difficult burden, they have stretched the rules that they would normally apply and permit that kind of inquiry.

I'm not going to fight that. I'm going to bring us back to this case, because I'm going to say right now that's not the plaintiffs' burden in this case.

The plaintiffs' burden in this case is to show that that statute does not have a legitimate secular legislative purpose. That can be done wholly without legislator comments.

THE COURT: Maybe it can be done, but I don't see why they have to restrict themselves.

MR. ROBERTSON: It is probably the easier way to do it.

THE COURT: Don't hammer that.

(p. 23) MR. ROBERTSON: Let me go to the hearsay aspect.

THE COURT: Yes.

MR. ROBERTSON: We have legislator comments. I'll focus on one, because it's a little ludicrous, that are being offered to prove the truth of the matters asserted herein.

THE COURT: That he made the statement.

MR. ROBERTSON: He made the statement.

THE COURT: Yes.

MR. ROBERTSON: From that you are to divine what? That that was the purpose that that person, declarant, had in voting for the act?

Further, you are to divine that that person's utterance during the debate was heard by others.

Further, you are to divine that those others did not evidence a rejection, or if they did, it was not reported.

Further, you are to divine that because they voted for it, they must have embraced it.

Further, you are to divine that those that voted against it voted against it because they rejected it.

I submit to you that that is so attenuated as to be unhelpful.

Add to that that what you have here is less than 14 legislators who were vocal out of 92 who voted originally in both Houses.

(p. 24) THE COURT: Mr. Robertson, what I'm expecting you to do is to bring in all the considerations, why this has an important secular purpose. What is it in the educational values that are in this Moment of Silence that is important for the secular education of students in the New Jersey schools.

There must be countervailing reasons. There must be legislators who have said this is important for proving this, that and the other thing for young students.

Where is it? That's for you to bring in.

These observations—

MR. ROBERTSON: If your Honor is shifting the burden of going forward immediately, then there is no reason for anything. Forget the newspaper articles. We will go on their allegations, and the legislature will bear the burden of proving that its law is constitutional.

THE COURT: No. Assume they make a prima facie case. Then you have to go forward.

MR. ROBERTSON: Judge, what I'm suggesting to you is that on hearsay grounds Mr. Kennedy's remarks—

THE COURT: You're going to relevance, not hearsay. Hearsay is just whether or not he made this statement. That's all the hearsay aspect of it is.

MR. ROBERTSON: The hearsay aspect of it is what is it being offered for?

(p. 25) THE COURT: It is being offered for the purpose of the legislature.

MR. ROBERTSON: What is it being offered for? If you're telling me that I'm going to relevance, and relevance is not a material inquiry of hearsay, then I suggest to your Honor that there is no purpose for the hearsay rule.

THE COURT: Well, I don't follow that, but go ahead.

MR. ROBERTSON: Judge, if it is not a material or relevant issue, there would be no effort to interject hearsay. It is about as important as it rained on the 24th of June. I have evidence of it. I want to introduce it. I stand up and I say, first of all, it's hearsay, and secondly, it is not relevant, what is it being offered for?

THE COURT: If it's not relevant, you don't have to worry about hearsay. But you are arguing, your prior arguments are that it is very impersuasive on the issue of the purpose.

Hearsay is whether this newspaper article is proof of the fact of which it states, which it is.

MR. ROBERTSON: Fine.

THE COURT: The legislators said this. The newspaper article is hearsay. No question.

MR. ROBERTSON: Judge, what purpose in this case does Mr. Kennedy's observations that the founding fathers are (p. 26) spinning in their graves have?

THE COURT: To show that he apparently is distressed about the present situation of no prayers in public schools. Maybe that's what it is.

MR. ROBERTSON: Your guess is as good as mine, because that's the totality of the statement.

THE COURT: All right. Then you may say that's totally irrelevant.

MR. ROBERTSON: And I have.

THE COURT: That's the other part.

MR. ROBERTSON: It's a hearsay statement being offered for the truth of the matters asserted therein.

What, that they did spin in their graves?

THE COURT: No, the truth of the matter is that he said that. That's the hearsay aspect of it.

The fact he said it may not be relevant.

MR. ROBERTSON: Judge, I have used the very same argument that your parroting back to me, not before your Honor, but before many judges where I have said it's not hearsay, Judge, it is not being offered for the truth of the matter asserted therein, only this, the statement, was made.

THE COURT: Well, it is hearsay.

MR. ROBERTSON: It is hearsay, and it's included hearsay. We have set forth our—in our brief exactly why we think it is unreliable hearsay.

(p. 27) The fact that it has been parroted and repeated does not make it trustworthy.

The issue here—

THE COURT: Are you denying that they said this, that they said that?

MR. ROBERTSON: I'm denying that was the full context of the statement.

THE COURT: That's not the same thing.

MR. ROBERTSON: The articles themselves cast doubt on whether that was an accurate quote. Go back to the Kennedy quote.

THE COURT: Then you're debating whether the articles are accurate.

MR. ROBERTSON: Judge, I have to debate that, because I have nothing in the articles. I have nothing in the form of affidavits that indicate that the reporter heard this with his own two ears, that he reported it accurately, that he got the context correctly, that he was present during all of it, that it wasn't part of a rewrite, that an editor didn't modify it, that he put it as it relates to the act in question.

I can't concede those—

THE COURT: Let's cut through all that. Your man doesn't like what was reported. It's very simple for him to come up and say this is what I said and what I didn't say.

(p. 28) MR. ROBERTSON: And waive the privilege.

THE COURT: If he thinks it's that important, yes. Come in here and be forthright and say what he wants to say.

MR. ROBERTSON: That's the Hobson's choice.

THE COURT: Everybody in life is faced with Hobson's choices. So these legislators have Hobson's choices.

MR. ROBERTSON: And I think your Honor has done for me what I wanted to do.

THE COURT: Good.

MR. ROBERTSON: The application here is really an attack on the privilege.

THE COURT: No.

MR. ROBERTSON: It is a use of a hearsay mechanism to undermine the privilege.

THE COURT: No, absolutely not. They have their right to stand silent, not participate in discovery. I've never heard of legislators who wanted to stay silent before, but here it is. It is their rights.

MR. ROBERTSON: Judge, I submit to you, and I ask your Honor, and I know your Honor will do this, that if you review the privilege, you will understand that the privilege is not just a privilege to frustrate litigants.

Indeed, the legislature is frustrated by the privilege.

(p. 29) But what's at stake with the privilege is greater than this particular case or the ability of these men to get on the stand and say I didn't say that, here's what I said, and that's what I meant.

It is that very inquiry, and being forced to that very inquiry, that's at stake here. And that's why they are standing, as you say, silent.

THE COURT: Fine. It is no absolute privilege, as I see it. It is a rule which enforces the desirability of not compelling legislators for leave to leave their jobs to the legislature and go testifying all over the countryside, which would be a totally unreasonable burden.

MR. ROBERTSON: That is one aspect of the privilege. I've cited your Honor sufficient authority that that is only one aspect of the privilege.

THE COURT: I haven't bought the rest of it.

MR. ROBERTSON: All right, you haven't bought the rest of it. So again, I ask your Honor to make a clear ruling on that, in that regard.

THE COURT: There is no need to go beyond what I have already ruled.

MR. ROBERTSON: Then I would ask you this—

THE COURT: Yes.

MR. ROBERTSON: I'm not going to belabor this much more. I've cited O'Brien. I pointed to O'Brien. (p. 30) O'Brien goes to relevance. I think O'Brien is dispositive of the case.

THE COURT: All right.

MR. ROBERTSON: I've cited the rules that pertain to hearsay evidence. I think they are dispositive. I have cited you to our discussion of the legislative privilege. I think that is dispositive.

Now, I ask your Honor for the following; if your Honor is inclined to grant this motion, and to deny our motion to bar this, then I ask your Honor to certify the question.

With all due respect, I think your Honor is wrong on all three grounds, and I would like the opportunity, before I am forced into elections, to have the Court of Appeals review the issue, to determine whether the legislative privilege, as I see it, is the privilege or whether it is as your Honor sees it.

THE COURT: Let me make sure I understand your concept.

Your concept of the privilege is that no court may refer to anything that a legislator has said in the course of its legislative duties in order to ascertain the meaning or intent of a statute. Is that your contention?

MR. ROBERTSON: No sir.

THE COURT: What is your contention?

MR. ROBERTSON: My contention is in a case where (p. 31) the legislators' actions, the legislative action is attacked and the legislature is defending, the Court cannot use—

THE COURT: No legislator is defending here.

MR. ROBERTSON: The legislature.

THE COURT: That's nonsense. Everytime an act is contested, you would have this situation. Everytime an act was—

MR. ROBERTSON: No, Judge, I do not think that you have the situation in every act that is contested.

THE COURT: Why not? What's the difference?

MR. ROBERTSON: On the legislative privilege grounds, you only have it where the legislature is a party.

THE COURT: The legislature is not a party here.

MR. ROBERTSON: They are an intervenor-defendant here, your Honor.

THE COURT: That raises problems about your privilege, which I won't go into.

MR. ROBERTSON: It does not, because at the time we asked for intervention, Mr. Marinari made clear on the record that we preserved our privileges. The plaintiffs were on notice of that and so was this Court.

THE COURT: Well, frankly, I think to me it is incomprehensible, your position.

MR. ROBERTSON: It is frustrating to you, that's what the problem is.

(p. 32) THE COURT: No, it's just I think you're claiming something so broad for the privilege that it extends beyond all reason.

This isn't—has nothing to do with the legislator being held criminally liable. It has nothing to do with legislators being sued civilly in any way.

This is simply a question of constitutionality of a bill, very simple suits. The answer may be difficult, but the suit is simple.

No attack on any legislator. Simply voted for or against the bill. And now the bill is under question.

If you think the Court can't refer to what was said during the course of the adoption of that bill because of some privilege, to me that just boggles the mind.

MR. ROBERTSON: Apparently, Judge, you don't agree with me, but I think the Third Circuit has outlined the scope of the privilege very clearly. The privilege calls for the nonevidentiary use of legislators' statements.

THE COURT: You are going to give a privilege for legislators of New Jersey which New Jersey itself doesn't give?

MR. ROBERTSON: New Jersey courts have not addressed this issue.

THE COURT: But what has the federal law got to do when the state itself, the Supreme Court in the state, has (p. 33) referred to what the legislators have said and relied on it as evidence?

MR. ROBERTSON: The Supreme Court has not addressed the issue.

THE COURT: But this is New Jersey law we are applying.

MR. ROBERTSON: The only case that you can point to, Judge, in all due respect, is Raybestos-Manhattan.

Judge Lenox is just wrong.

THE COURT: I think he's right. And it's state law.

MR. ROBERTSON: If you examine Judge Lenox's authority, you will find that he is wrong, and you will find the authority he relies on is consistent with O'Brien.

That authority indicates that when the Court, in aid of legislation, is in need of some interpretation, it can look to recognized legislated sources, normally, committee reports.

Never does the Court impeach the clear language, unambiguous, of legislation by selecting from floor debates fragments, utterances of less than the whole.

That's what your Honor is being asked to do here. Raybestos does not stand to the contrary.

The cases Raybestos relies on do not stand to the contrary either, Judge.

(p. 34) THE COURT: All right, let me rule on the motion.

MR. ROBERTSON: Judge, could you include in your ruling, if your Honor please, a certification of the question?

THE COURT: I doubt it. We are heading for trial. We can send all the questions up at once which would be more efficient.

MR. ROBERTSON: That forecloses me from making strategic and tactical decisions. Your Honor said it already.

If I'm wrong, then I have to turn to my clients and say, gentlemen, I'm wrong, you're wrong, we have to go see Judge Debevoise in Newark.

If I'm right, I don't have to make that choice.

THE COURT: All right.

This is a motion in limini which is brought by the plaintiffs seeking a ruling on the admissibility of newspaper accounts of events leading up to the adoption of Assembly Bill 1064, Public Law, 1982, Chapter 205, New Jersey, supplementing Chapter 36 of Title 18A.

In good measure, the articles concern statements by legislators during the period when the bill was being considered for adoption by the legislature.

The plaintiffs seek to introduce the various newspaper articles, editorials and other materials without the necessity of bringing to court the newspaper reporters who wrote the various articles.

(p. 35) MR. ROBERTSON: Your Honor, please excuse me, because I have to interrupt. I don't want your Honor to make an unnecessary ruling.

I'm going to—

THE COURT: Please sit down. When I'm giving an opinion, sit down.

MR. ROBERTSON: I was going to say—

THE COURT: I know, you're not contesting authenticity.

MR. ROBERTSON: I wanted to concede something else, a necessity that I failed to talk about, and that is, if your Honor is going to introduce the statements as contained in the newspaper articles, I am not going to put the plaintiff to the burden of calling these newspaper reporters.

I wanted to concede that. That's why I thought I would mention it.

THE COURT: That goes to authenticity.

MR. ROBERTSON: My apologies for interrupting you.

THE COURT: The case itself attacks the validity of the act in question on the grounds that it violates the

Constitution of the United States, Article First, prohibiting the establishment of religion.

The tests which would be imposed in determining the validity of the statute under applicable law are (p. 36) three-fold.

First, it must be determined whether the legislation was primarily secular in nature, or whether it had a religious motivation.

Secondly, it must be determined whether principal or primary effect of the legislation is secular or religious.

Thirdly, it must be determined whether it involves an undue entanglement by the state with religion.

In determining all of these questions, it is important and significant to establish, if possible, the overall public perception of the activity mandated by the statute as secular or religious in nature. This would go to the purpose, to the effect and to the question of entanglement with religion.

The kind of evidence which will be pertinent in making this inquiry is mutiple in nature. It will be important to acertain the context in which this legislation was adopted. By context, I mean the place where the legislation will be applied, that is, whether it's in schools where impressionable youths are concerned with its implications, or whether legislation of this nature is to be applied in places where adults are involved, such as legislatures or courtrooms.

Another context which will be important is that in which the legislation was enacted. The particular problems (p. 37) and social situations, debates, arguments,

contentions which were involved both in the legislature and in the public mind at the time the legislation was adopted.

Another area of inquiry will be the historical context in which the legislation was adopted. What were the legal currents? What were the social currents which gave rise to this legislation and which resulted in its enactment?

Another area of inquiry will be into the groups and the individuals supporting and opposing the legislation, what the reasons were that they advanced for opposing it, what the reasons were advanced for supporting the legislation.

Another area of inquiry will be the similarity or dissimilarity of the practices mandated by the legislation to traditional concepts of religious or nonreligious activities.

As previously mentioned, an important area of inquiry will be the public perception of the legislation, its purpose and its effect.

In establishing public perception, I will be interested in expert testimony. That will be pertinent. Letters to newspapers and public officials will bear on this question. Comments by officials, by religious leaders, by private citizens, this would bear on the question of public perception. Newspaper articles, magazine articles, editorials, these would bear on the public perception of the purpose and effect of the legislation. Public opinion polls (p. 38) will be relevant in this connection.

Turning to the particular issues of this motion and the evidential nature of the newspaper articles which will be offered in evidence, first it can be said, as the intervenors have agreed, there is no problem with authentication of

such articles. Federal Rule of Evidence 902(6) provides for self-authentication of newspaper articles and periodicals.

I would note the form in which some of the newspapers and articles were presented on this motion leaves something to be desired, and may have to be cleaned up, or further amplified so that it is obvious from the face of the material that it is from a given newspaper on a given date.

As to the other evidential problems, for a number of the purposes which I alluded to above, the newspaper articles are not hearsay evidence at all. They are simply proof of themselves. That is, proof of what the public is saying, what the public is hearing, what is being circulated, ideas that are being circulated among the public.

This does not require a hearsay exception in order for it to be admissible. It is evidence of what it is and that may be used as evidence of what the public perceives the purpose and effect of the bill to be, and from that, inferences can be and have in prior cases been made as to what the actual effect of the bill may be.

(p. 39) If the articles are being introduced as evidence of what the legislators themselves actually said, they are hearsay, and I conclude that they are within the exception to the hearsay Rule 803(24). They are statements not specifically covered by any of the other exceptions to the hearsay rule. They do, however, have equivalent guarantees for trustworthiness. The guarantees of trustworthiness arise from the fact that there are multiple instances of reporting the specific statements made by legislators.

These multiple instances tend to verify the accuracy of each other. If there were an isolated statement which was of significance in itself, it might well be that the trustworthiness would not be sufficiently great to permit this kind of proof. But this is evidence of a general kind of statement having a general purport, which generally is the same throughout all of the reports over a significant period of time, which constitutes a mutually establishing reliability.

Similarly, the failure over a significant period of weeks and months of any purported maker of the statements to deny, disavow or discount, modify the statements generally being distributed is significant as to the aspect of reliability that the statements were in fact made. I think the circumstances are such that there is considerable reliability to them as to the fact that they were indeed made. (p. 40) The statements are being offered in evidence as evidence of a material fact.

Traditionally, courts in New Jersey and elsewhere have looked to statements of legislators as an indication, at least, of the general purpose of the legislation. It is not conclusive. What any single legislator may say will not bind the entire body. Legislation is a collective act, and no statement by any one legislator can itself be taken as that of the collective body.

However, the reports of the legislators' statements, other material of this kind, has been examined by courts in New Jersey and elsewhere in the federal courts as at least an indication of one element of the proofs of what the purpose of the legislation was. Of course, here under the Supreme Court cases, the purpose is a highly material element of the case.

The next criteria under Rule 803(24) is whether the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts.

As I previously held, there is a public policy against permitting testimony, requiring testimony of legislators concerning their public duties. Public policy, at least, limits the taking of their depositions, exposing them to discovery, and that policy has been implemented on their (p. 41) own motion in this case to exempt them from responding to depositions, from answering interrogatories and responding to requests for admissions. Thus, the plaintiffs in this case are barred from the usual source of finding out what somebody said, by asking that person, and must, of necessity, go to other sources of the information and proofs. This, I think, brings the statements within Rule 803(24)(b).

It could be argued that they should bring the reporters in who heard the statements and ask them to repeat what they heard the legislators say. This seems an unduly burdensome and cumbersome method of proceeding, and in all likelihood, would produce nothing more than reference to their notes which were incorporated into the articles themselves.

The third requisite under Rule 803(24) is that the general purposes of the Rules of Evidence, the interests of justice will best be served by admission of the statements into evidence. That is the situation here. The general purpose of the rules is to have truthful, accurate information on material issues. That is what this will be, subject, of course, to any specific article through objections on rele-

vancy as to any particular statement which is contained in it. The interests of justice suggest that we proceed in this manner. It is an expeditious way of obtaining accurate reports of what the legislators have said without compelling the legislators to subject themselves to discovery or other (p. 42) burdensome efforts which would take them away from their public duties. Thus, I conclude that the statements are clearly admissible under 803(24).

The objecting intervenors have again advanced the issue of privilege asserting that the courts may not consider these statements at all, since to do so would violate the privilege of the legislators, which they are apparently afforded under New Jersey and federal law.

I see not basis for this claim in New Jersey law. We are dealing with New Jersey legislators. I note that the courts of New Jersey have referred to statements of legislators of New Jersey in ascertaining the intent of the—any particular act in question, and have not held that the legislators are somehow immune from having their statements examined in a court proceeding, which is looking to the meaning and intent and purpose of particular legislation.

I forgot to mention one reason for the inaccessibility of the—this kind of evidence—the fact that New Jersey, unlike the United States Congress, and unlike some state legislators, does not have a system of maintaining a record of legislative activities. Consequently, this commonly used source of information as to the purpose of legislation is not available to the plaintiffs in this case, which is another reason why it is necessary to go to the public press for

reports of what the legislators did during (p. 43) the course of adoption.

The intervenors have asked that I certify this evidential question for the purpose of appeal at this time. I decline to do that. I don't think there is any legal basis for saying there is a legislative privilege here.

The trial is almost upon us. This issue can be raised there. I appreciate that the intervenors think they may have to make some tactical decision. They are in no different position than if I made this decision at the trial, which I could have done. They could face it at that time. They can take their appeal from the whole case.

I think, obviously, this case is going to be appealed, and I think we ought to put it in the posture where the entire matter can go forward rather than a piecemeal appeal on evidential rulings. So, I will not certify the case for appeal.

All right, anything else?

MR. ROBERTSON: Mr. Altman will submit an order?

MR. ALTMAN: YES.

THE COURT: Yes.

MR. ROBERTSON: A matter of housekeeping.

Your Honor noted that the copies of the articles that we received—mine are very bad in many instances—

THE COURT: Mine are too.

MR. ROBERTSON: I would like to get some clean (p. 44) copies as soon as possible.

THE COURT: I think we ought to have articles—perhaps it can show the front page of the paper from which they came, and then the article itself that you're concerned with, just for authenticity purposes and to be sure we know where they came from.

MR. ROBERTSON: Just for readability.

THE COURT: Yes, readability.

All right, let's move on then. I guess it is May 2nd or 3rd—

MR. ROBERTSON: May 13th.

THE COURT: May 13th.

MR. ROBERTSON: Judge, while I'm here, I would like to ask the Court to reconsider the May 13th date. I know that your Honor's schedule—you mentioned this at the status conference—doesn't permit us to have but one day on May 13th.

THE COURT: You need more time?

MR. ROBERTSON: Only the following, Judge, the State Bar Association meeting is on that weekend.

THE COURT: The weekend before or the weekend after?

MR. ROBERTSON: The 14th. And I was wondering, depending on your Honor's schedule, obviously I'll be here on the 13th if that's what you want to do, but since we can only (p. 45) get one day in on the 13th, unless Mr. Altman has a particular problem, I would like to be able to move it off until the next week if that does not—the next week being the 16th or the 17th.

THE COURT: No, I have a problem with the next week. I've committted it to other people who are in the courtroom now. So I wouldn't dare let them—

MR. ROBERTSON: The other problem is we have about 20 or 30 depositions scheduled already.

THE COURT: Let's leave that open. Let's see where you are.

MR. ROBERTSON: I wanted to bring that up.

THE COURT: I'm not totally inflexible. But if you think you are not going to be ready, let's look at it after a bit of time has gone by.

MR. ROBERTSON: All right.

THE COURT: Good. Thank you very much.

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EXCERPTS FROM TRIAL TRANSCRIPT

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(p. 13) MR. ROBERTSON: No, Judge. The understanding was that plaintiffs, not witnesses—and I point to Dr. Younger and Dr. Sarfaty, who had been identified as being witnesses here.

I object to the affidavits of both of those.

MR. ALTMAN: That's fine.

THE COURT: All right, just plaintiffs.

MR. ROBERTSON: With one addition. There was one plaintiff who was not listed in the complaint, but whose affidavit was submitted. I believe her name is Mrs. Rotberg. We agreed to have the stipulation cover her as well.

THE COURT: The plaintiffs plus Mrs. Rotberg's affidavit will be treated as if those persons testified to the effects set forth in the affidavit.

MR. ALTMAN: I'll prepare a list and submit it, your Honor. And we agree that Dr. Sarfaty, S-a-r-f-a-t-y, and Reverend Young, they will both appear as witnesses.

THE COURT: All right, fine. Any other preliminary matters?

MR. ALTMAN: I don't think so.

THE COURT: All right. Call your first witness.

MR. ALTMAN: Doctor Langdon Gilkey, your Honor.

THE CLERK: Place your left hand on the Bible, raise your right hand.

* * *

(p. 20) Gilkey—direct

MS. MC HUGH: Plaintiff's Exhibit Number 73.

THE COURT: All right, P-73 in evidence (Exhibits marked Plaintiff's Exhibit 73 in evidence.)

MR. ALTMAN: Your Honor. I submit Dr. Gilkey as an expert on theology. I'm prepared to go into the substantive testimony.

MR. ROBERTSON: No voir dire, your Honor.

THE COURT: All right, you may proceed.

Q Are you familiar with the statute that is known as the Moment of Silence that has been referred to at times as Assembly Bill 1064?

A I am.

Q You have reviewed it?

A Yes.

Q And for what purpose did you review that statute?

A In order to state my opinion, I presume as an expert, about the meaning and effect of such a statute in the life of the school and the state.

Q Did you reach an opinion to that effect?

A Yes, I did. I will subsequently seek to argue this, obviously in my testimony, that the primary result of such a requirement or such a stipulation that there be a Moment of Silence will be that it will be used as a mode of prayer and that this mode of prayer being particular—not universal, but a particular form of that, of, so to speak, spiritual (p. 21) act—will exclude other forms, other similar forms, and will therefore be divisive within the total community in the life of the school and the life of the larger community.

Q Now, you understand, in rendering that opinion, that the Moment of Silence as it is written on its face mandates a moment of silence, but addresses or suggests that contemplation or introspection are to be voluntary?

A I understand that, right.

Q And it is your opinion that the effect of the statute will be a prayer or will result in prayer in the public school?

A The major use of it will be for that. That the primary result will be that we will see acts of prayer in, generally, in classrooms where this is done.

Q You said particular type of prayer rather than prayer in the generalized sense. What type of prayer are you referring to?

A Well, that's a rather complicated matter which I would like to get into subsequently. But an objective act of prayer is, I think, going to be the primary result of this Moment of Silence.

It will be particular in the form that this will be a —what—a Christian, possibly certain kind of Jewish prayer, which I will explain subsequently, and will not be the form of spiritual act that other communities find appropriate.

(p. 22) Q And do you have an opinion as to whether this prayer will have the effect of enhancing spirtual or religious life in the community at large?

A I think that—I think that it will have one effect of, so to speak, advancing religion, and that's one thing that I find inappropriate on the part of the schools.

On the other hand, I'm prepared to argue that a required act has only dubious spirtual results. That's a somewhat paradoxical statement, but I think that any establishment of a spirtual action or establishment of religion advances religion in the sense the courts have found objectionable.

On the other hand, I believe firmly and am prepared to argue here that such stipulations, such establishment, don't have the effect they want to have, namely, to improve the spirtual life of the community.

Q Doctor, I would like to take you now into the basis and the reasoning by which you reached those various conclusions.

A Um-hum.

Q And since we are talking about religion, can you begin in a nutshell, so to speak, or in a simple way, can you define religion, the word "religion" for us, that would apply in a— in the context of the Judeo-Christian heritage or others that you have mentioned, such as Buddhism, Confucianism, et cetera?

A Religion is recognized as very difficult to define (p. 23) because of its almost infinite variety. There is a good deal of argument. This is a controversial thing to do, to define religion, but, nevertheless, the courts and people commenting on civil life and people in the field of religion have tried in some way to make such a definition. This is clearly controversial.

I would suggest that religion includes a view of reality, of what is really real, of ultimate reality, especially with regard to the human predicament and the resolution

of that predicament. I will make that clearer, I think, in a moment.

That it includes along with that view of what is real, what the human situation is, a way of life; that it proposes to its adherent and to which they assent, and that this view of reality and this way of life are thirdly borne by a community, community over time. It is not an individual matter. It is always represented by a community.

Q So it is your testimony that these three aspects, a view of ultimate reality, a way of life, and a community that holds to this way of life and view of reality is a definition that would apply to religion generally?

A I find it applicable to everything we call religions.

Q Okay.

A Whatever the content of that view of life is, of reality is, whatever the content of the way of life, and (p. 24) whatever the structure and character of the community.

I think anything that we call a religion has those three elements, and that anything that has those three elements is ipso facto a religion.

Q Can you expand briefly for us what you mean by an ultimate view of reality or what is really real? What do you mean by that?

A Well, let's contrast that with what one would call a psychological view of—there are many psychological views, or views in psychology that talk about what's wrong with us. But they don't present to us a view of nature,

of history and of all the things that make up whatever there is.

I think every religion does present such a view. It may be very restricted, but then the culture is restricted. It is primitive.

But if you look at the major religions, Buddhism, Hinduism, Judaism, Islam, Chirtianity, so on, you will find them in very different ways talking about what is real, what the universe is made up of.

Though they don't follow that out, nevertheless what's central to their religion, in our case God, is regarded as the source of reality. That's what I mean as the most real thing there is.

I think that this is true of every religion. When they talk about their gods, whatever they are, these are (p. 25) very important in reality, very basic to reality.

Q By way of life, would you expand on that?

A This, again, would be very various. It could be a very esthetic way of life, as in some forms of Hinduism and Buddhism, and in some forms of Christianity and Judaism.

It will involve the behavior of people who are the adherents and included in that way of life will be a way of relating to reality; by worship, by mediation, by contemplation, by prayer, so forth. This will be part of the way of life. It won't necessarily be what we call ethics, but it will be very important to it.

For example, in Islam, the requirement to pray is very basic to the life of a Muslim. And in forms of

Christianity, the requirement to be a participant in the sacrament is very basic.

So involved in the way of life would be a way of relating to reality. This, of course, this is where the issue of prayer comes in very fundamentally in religion.

Q Am I mistaken or did you refer in your testimony to redemption as a way of life?

A Yes. Philosophy is interested in the character of reality, but—and it differs from theology, which is also interested in that, in the sense, it seems to me, that religious thought tends to zero in on the human problem and the answer to the human problem. This is its primary concern. (p. 26) It may use philosophy, but it is not interested in spinning out theoretical problems, but talking about what's wrong and what the answer is. Perhaps redemption through Jesus Christ, obedience to the law, nirvana, so forth and so on. These are all central to a religion.

You can whiff of religion whenever you've got that concern with resolving the basic human problem.

Q I think that your testimony as to a community of believers holding these views is self-evident. But can you relate these three components of your definition of religion to our Judaic-Christian heritage?

A That's a particular form of religion, though the tendency is for any culture to think its form of religion is a universal form. We are inclined to think that all religions worship God or something like this. Actually, they don't.

But when one is talking about the western context which has been, of course, predominantly influenced by

the Jewish, Christian and the Islamic traditions, all of them coming from the Hebrew tradition, stemming from that, our forms of religion are dominated by the figure of God. All that is religious has to do with God.

This is, what shall I say, the practical result of the First Commandment, thou shall worship God alone. Everything religious relates to God in all these of these faiths.

(p. 27) In fact, if you do something religious not related to God, you're involved in blasphemy, idolatry, so forth and so on. It is a very clear point.

So, we associate relationship with God with everything religious.

This isn't universally so. Early Buddhism and large parts of Buddhism don't have any predominant deity, but they are religious. That's one reason the definition has to be broader.

In the western context, certainly God is absolutely central, and the force of that with regard to our case is that a relationship to God, therefore, is the epitome of a religious act. Therefore, that is the way that a person personally comes into an act, so to speak, the relationship to God. That is what prayer is.

In Islam, in Judaism and in Christianity, this is its function. It's not the only way one is related to God.

For example, the sacraments in the Catholic tradition are clearly very, very definitely relationships to God, but it's quite central.

Q So that in our culture, prayer by definition is always a religious act?

A That's correct. And for the reason I've given, because it is a relationship to God and that that, so to speak, one might say that not everything religious needs to be a (p. 28) relationship to God.

As I've said, there are religions that don't have a figure of God in them. But everything related to God is religious.

Q Well, in other areas of the world which are not influenced by the Judaic, Christian or Muslim tradition, the Far East, prayer is utilized?

A Yes. Well, one can say that prayer does appear in almost every religion. It may not be absolutely central to the life of the religion, but it is very hard for a religion to develop communally and historically without having some level of prayer. And in our traditions, as I've said, in the three traditions I was speaking of, since the divine is personal, and the relationship, therefore, is one of—how shall I put it—speaking and personal dialogue, if you will, as central, then prayer takes a very central role.

In other traditions, where the divine is more impersonal, meditation and contemplation may make—may take a very central role in relating to the divine.

I'm thinking here of Hinduism, Buddhism, and to some extent Sikhism, though, like us, it is both.

But on other levels of those—where one might call a popular level, there might be many acts of prayer, in both Buddhism and Hinduism to particular deities.

Q Let me flesh that out a bit.

(p. 29) First of all, do you use the term contemplation?

A Yes.

Q And meditation interchangeably?

A In this context I am, yes.

Q Okay. And you are saying in other religions, or are you saying in the western religions as well, contemplation and meditation is a form of prayer or can be? What is your testimony on that?

A No, I wouldn't—one could say that, but then you're stretching the word "prayer" so that it loses its particular force, it seems to me.

It is a way of relating to the divine, put it that way. Though the moment you say that a Buddhist will come along and say we don't recognize anything as divine, but meditation and contemplation are central to Buddhism.

What I was specifying was the highest level, the most elited levels are contemplative and meditative, and it is, so to speak, other levels, both of the life of this person we are thinking of and on the life of the whole community that pray that prayer to particular deities might take place.

Now, meditation and contemplation are central where the divine is impersonal. I don't mean to be perjorative there, and we shouldn't be.

Q Central to a religion?

A To the life of the religion, where the divine is (p. 30) perfect, and where it is imminent, as we call it.

That is present in the self, present in experience, so that by stopping to think about streetcars and my job and what's going to happen tomorrow and sort of clearing the mind, the mind can relate itself to the divine and become identical.

This is the function of Yoga, of meditation, of contemplation, in these religions.

In this sense I don't want to say it replaces prayer, but it is certainly a way of relating one's self, one's whole being to the divine. This is the religious use of contemplation and meditation very clearly.

Q What would be some of those religions?

A Hinduism, Buddhism, primarily.

Now, interestingly, there have been and still are mystical wings, so to speak, mystical elements within the semetic traditions, within Judaism, within, especially, Catholicism, though also among the Quakers and among persons in the Christian tradition and in the Islamic tradition, a group called the Sufis—probably many people have run into the Sufis—where immediate meditation and contemplation, a kind of spirtual unity with the divine is sought for.

Now, I think most of us agree these are not—that Judaism and Christianity, Islam, are not normalitive mystical, so to speak, but there are mystical elements in (p. 31) them. In those cases meditation and contemplation are very fundamental. Anybody who is a Roman Catholic or Greek Orthodox knows very well the basic part of that tradition is mystical, contemplative and so on.

Q Can you give us—strike that.

Does contemplation have a traditional role in more mainstream religions in western culture, for example Quakers or—

A The Quakers have developed a mystical element within their life and almost every tradition, Lutheran and so forth has as well.

One might say the Calvinists are particularly, I won't say barren, but they haven't been interested in the mystical particularly.

I don't think Protestanism has been, on the whole, as mystical as Catholicism.

Q What about the term "silence" as a spirtual or religious act in our heritage? Can you expand on that or give us an opinion?

A Silence has always been very important in religion, though it is not necessarily predominant. That is to say where you have, again, a conception—perhaps that's too intellectual—where the divine is personal, speaks to us from the scriptures, speaks to us from the word preaching, speaks to us through the law, and we reply in prayer or in (p. 32) acknowledgement and so on, then silence is apt not to be a central point.

Where contemplation and meditation and, so to speak, a nonintellectual, nonethical relationship to the divine is predominant, then silence becomes much more basic.

I think silence is very much a part of the paraphernalia of religion, but not absolutely central.

Q Going back to the Quakers, would silence have a greater role among Quakers?

A It does, obviously. That is, within silence the inner light comes. I hesitate to say speaks, that's a little bit of a mixed metaphor, but silence is certainly very productive there.

This is significantly different than a community built upon preaching, for example.

Q In contemporary, so to speak, 20th Century America, have other religions become more influential or more involved in America or New Jersey, as opposed to the Judeo-Christian heritage?

A Well, I think it is generally agreed by a number of observers, and I guess participants, that the last 20 years have witnessed an astounding growth of nonwestern or nontraditional religions in the life of, especially America, but also other parts of the west.

One might put it that the missionary flow is (p. 33) going the other way. That is to say, instead of western religions moving across the oceans to India, to China, to Japan, so on, the tide is going the other way, and certainly predominant in the religious life of the United States, has been the appearance of Zen, Yoga, forms of Hinduism, forms of Sikhism, as well as various religions that have delevoped within the 20th Century.

There are additional religions that have come in much greater numbers to our common cultural life and into religion.

I suppose one would say the Moonies are a new form, whereas Zen, Monasterial, Sikhism, various forms of Hinduism or traditional in their form.

What all of that means is another question. But the fact, the evidence, is very clearly there. We are a much more pluralistic culture religiously than we were before. This includes Islam, both the Black Muslims and other forms of Islam. Sufism, for example.

Q In the beginning of your testimony you indicated that it was your opinion that the Moment of Silence would most likely result in what you called objective prayer. You made reference to religion as particular, not universal, not general.

Would you expand on that and tell us what you meant?

(p. 34) A Yes. I think that it is important to remember that while religion is universal, apparently in culture, even where a culture like modern Russian culture seeks to get rid of it, it keeps coming back. But, nevertheless, the forms of religion are not universal; that is, every religion that appears is a particular form.

Each culture tends to think that its forms are universal, but they turn out to be quite particular. Jewish, Christian, Islamic, western and so forth and not eastern.

And so I would suggest that every religion that appears concretely in history is always a particular form of religion.

In this sense, religious ideas are as particular ideas. They have a Christian background or a Jewish background or a Buddhism background and reflect that particular background.

Religious obligations are particular, and in this sense which is relevant here, forms of religious action are particular.

Now, with regard to our subject, this means that what we would associate with an act of prayer is very particular to our cultural and life with its particular religious traditions.

I'm thinking here of what we call a prayerful attitude which means bowing the head, closing the eyes, (p. 35) clasping the arms, being silent and so forth and so on, and we assume this is universally what people do when they pray in public.

Q That's not so?

A And this is not at all so, I think, and a good many others. This form of behavior which we associate with prayer, you go to an Alabama football game or Rotary Club meeting, whatever kind of thing, this is what happens.

This, I think, is associated with the development of Protestanism from that in the 17th and 19th Centuries. Let's say it spread out into reform Judaism, and into, clearly, a lot of modern Catholicism.

However, historically Catholics would have knelt in order to pray. Jews, historically, would have raised their arms this way and their eyes in a quite different way as we all know.

Islamic people, when they pray, make a sacred space for their rug, purify themselves, get down and prostrate and call on Allah.

If you go to—this is not a moment of silence. Real Islamic prayer in that moment of silence would be quite noticeable. Let me put it that way.

In Japan, Shinto person claps their hands in front of the deity. If you ask them why, they will say to wake him or her up and call attention to it. That, generally, (p. 36) would be quite a different way of prayer.

This is part of what I meant by this, by the particularity of it. This seems to us very general, but people from those traditions to wish to use this moment in this way would find themselves unable to use it that way. Whereas people from a Protestant background, or a Catholic background or Reform Jewish background would be able to use it.

In this sense it is particular and I think divisive.

Q So that when you gave your opinion that the moment of silence would result, in your view, in prayer, I take it that you're saying particular prayer for particular groups?

A Yes.

Q Excluding others?

A Since our population is filled with many types of religious life, different from the main line types, it is not—a moment of silence is not appropriate for all of them to use freely in exercising this.

This is—this specifies when you require and establish a particular form of spiritual life, you're establishing a particular form, and, therefore, excluding the free exercise of other groups.

This is the relation of the two.

Q Why do you think that the moment of silence in the (p. 37) context in which it was expressed in the statute

would result in any form of prayer, even the traditional Protestant or Catholic or Jewish prayer?

A Well, that's a rather—that calls for a rather complicated answer. It is a rather important answer, it seems to me.

My own perception, having read a good number of the statements involved in the introduction of this legislation, would indicate to me that the intent or purpose of the legislation on the part of many of the persons, in fact, all of the persons who pushed it, was to bring prayer back into the school. That's one side.

As a citizen reading this, reading their statements and so on, this was my perception of what was going on.

Secondly, a moment is only a moment. To anyone familiar with contemplation or meditation, or even, let's say, introspection—and introspection can be secular. I'm not denying that at all.

As I tried to indicate, meditation, contemplation and introspection certainly can be religious, in fact, are very important to religion, whether one is speaking of prayer or contemplation or what have you; the examination of the self, the quieting of the mind, the concentrating on something or other that one associates with meditation and contemplation (p. 38) are absolutely basic.

But meditation and contemplation and especially—in the sense of introspection, can be secular. I'm not at all denying that.

There one is thinking of one's self and one's thinking of one's relation to other people; one's thinking of one's

work in the world; one's thinking of one's possibilities. There are all kinds of things, so to speak, worldly things that one can be speaking of. This is a secular activity. I don't think we are involved in denying that.

Now, my point is that if one is speaking of any—I'll mention all three of these things, any serious form of prayer, that is to say, an inward form of prayer, or one is examining one's life in relation to God, examining what one has done in relation to God, affirming one's trust in God, praising God, so forth and so on, this is not a momentary activity. This ~~is an~~ activity that spans several moments of time at the least, and demands a good deal of inward activity.

In that sense prayer with a subjective component is something that one cannot conceive being done in a mere moment.

Q Isn't that true also of any secular substantive meditation or contemplation?

A Meditation and contemplation of any serious sort take certainly a large span of moments. They—incidentally, they (p. 39) are usually done not in—standing up, but in a seated posture. The mind is quieted down, the body is quieted, and then contemplation and meditation take place.

Now, my suggestion is also introspection as any kind of—what sub—substantive act, at whatever level of maturity we are speaking about is not momentary either, where the self sort of brings itself together, reverses its immediate situation and so forth and so on. Introspection in any secular meaning is a much more substantial activity than a mere moment.

For this reason I suggested that the major use of such a moment would be something that can be done in a moment, namely, what are called objective prayer, the acknowledgements of deity, closing of the eyes, bowing of the head, the inward recognition of deity, and then it is all over.

That kind of prayer is certainly very common in religion. I'm not implying there is anything wrong with it. It is significantly different than praying personally, so to speak, where one is really dialoguing with God. It is very different from a serious meditation and it is very different from introspection.

That's why I have suggested that the major use of the moment of prayer, a moment of silence, would be this type of objective prayer where people close their eyes and recognize the deity and then the moment is over.

(p. 40) And I, having read the—what shall I say—the statement surrounding the legislation with regard to prayer, with regard to the schools, with regard to the need of bringing prayer back into the schools, statements which certainly were made, it seems to me this is what they had in mind, this type of objective prayer.

Q Are you saying that because it was published, so to speak, or manifested to you from these type of statements, that this was what was in the mind of the legislature, that that would necessarily result in people utilizing that moment of silence for that purpose?

A Well, I am aware as a reader—I hesitate to say of Chicago papers, but certainly of the New York Times—of movements over the past years, few years, of introducing prayer into the public life, and especially into the schools,

amendments to that effect as well as amendments to declare us to be a Christian nation.

Now, this is what I mean by objectivity. This is like In God We Trust on the coin. You don't have to feel anything. It's there.

This is —this has been so prominent that one can hardly avoid it in our national life.

I have assumed that the motion—the movement, the social movements, both legal, legislative, so forth, that led to this law, was a part of that.

(p. 41) And I, as a person interested in religion, and knowing something about it, I'm suggesting what form of prayer is here being sought after, so to speak, though it is clothed, it seems to me, in the words of meditation and contemplation and introspection. I'm suggesting that those words hardly fit the moment, whereas objective prayer does.

The kind of subjective prayer one finds in, say, Pilgrim's Progress or in many of the psalms, to take two examples, that can't be done in an objective moment. No question about it.

Q Does the fact that this statute mandates the moment of silence at the beginning of the day play any role, or does that influence your thinking in terms of conclusions you've reached?

A Well, I suppose the most appropriate way to take—express my feelings is that lots of things fit together here, as far as I can see. And historically it was the case, and still is the case in many, what, private enterprises, so to speak, that things begin with an invocation, a prayer.

I don't wish to register, obviously, any objection to that. I do think it is inappropriate in our public schools and in our life and so on.

But the positioning of this at the beginning certainly suggests this historic habit and this still common habit of beginning important activities with a moment of (p. 42) objective prayer.

This is, I might say, more objective than most such beginnings because in most of them we ask somebody with supposed spiritual authority or eminence, a rabbi, priest, a minister, to state a prayer while we bow our heads, that is, to pray for us, in effect. But still, that is the kind of active prayer that I'm thinking of here, and I think that this is what is intended.

Q I think you mentioned it, but it bears repeating. You alluded to a moment of silence or a prayer at the outset of an Alabama football game or some other private forum.

A Yes.

Q Are you saying that the format which this moment of silence takes replicates or in some way mimics forms, moments of silence, where we generally utilize them as prayer in this country?

A Reproduces. Perhaps mimics is a word that has other intonations or connotations to it. It certainly reproduces it. And for those who saw this as a way of bringing prayer back into the schools, I think it—the reproduction is what was intended.

I certainly expect that in many particular situations in the schools this will, in fact, be a moment of silent prayer.

Q You indicated that you have read articles attributing (p. 43) various statements about—to the legislators that they intended—I assume you're referring to states, that they intended to bring prayer back into the school?

A Um-hum.

Q Can you tell us where you read some of those articles?

A In the papers.

Q Did you also have an opportunity to review our trial brief?

A Yes.

Q And appendix?

A Yes. Yes, of course, I read them there.

Q And, of course, those contained duplications of many of those statements?

A Right.

Q Do you recall reading that various legislators said that they wished to to reintroduce prayer into the school because they thought it might improve the moral fabric of society? Do you recall that?

A Yes.

Q And that if they reintroduce prayer, people would come back to God and religion, and they suggested that we were falling away from religion.

Do you believe that contemporary 20th Century American society is falling away from religion?

A It all depends on what's meant by that question.

(p. 44) As I've indicated already, I believe that the second half of the 20th Centry has been, to the surprise of

most commentators, a religious half century, and increasingly so.

Religion, instead of declining—and this would be over a long period, as commentators at the end of the 18th during the 19th and during the first half of the 20th Century, it was fairly agreed by everybody but religious people that religion was on the decline as modernity developed, and modern culture developed.

I think this has turned out to be wrong. I'm not saying that's a good thing because religion is a very dangerous matter. It is dangerous as well as creative. But there is no question that religion is on the rise.

Conservative form of religion is on the rise as well as these novel forms to our culture. Different formation, sectarian forms, we would say, though, remember, a sect here is—might be the established religion somewhere else, like Hinduism so forth and so on. So that I think that religion is on the rise in American and in Western culture generally.

One might say it has not penetrated into the academic world in any particular sense, except among graduate students and college students. But, nevertheless, in population as a whole, I think one can say this.

(p. 45) If one means religion is on the decline in the sense that the traditional religion are having a little bit of a hard time, the main line traditions, reform Judaism, Presbyterianism, Episcopalianism, so forth and so on, perhaps Roman Catholicism, one can say that can be so.

Fundamentalist, Pentacostal groups, again, I'm trying to be descriptive, not perjorative, has certainly been growing faster than the main line traditions have.

All three of them have lost many of their youth to various other religious groups, to the Unification Church, to Yoga groups, so forth and so on.

So it all depends on what you mean. But religion is certainly not on the decline at the end of the 20th Century. No question about that.

THE COURT: I'm not sure I understand the relevance whether religion is on the decline or ascent to this case.

MR. ALTMAN: I think that there have been numerous statements by the legislature that the moment of silence was intended to bring back some moral fabric into the schoolrooms. That's my next question, an opinion on that. I would like to demonstrate, I think it is important, not only for the case, but I think it's important publicly to make the point that this case isn't anti-religion.

The reason for the First Amendment, the reason we (p. 46) are seeking to enforce it, is to demonstrate this moment of silence is not an efficient or effective means of trying to bring back moral fabric; that it will actually have a denegrating effect on religion. That's my very next question.

THE COURT: Well, I don't—what you're trying to do it seems to me is suggest the legislature could find more effective ways to bring back religion.

MR. ALTMAN: One of the things that we have to look at, your Honor, is that if this has a denegrating effect

on religion, if it is not a good means for reinstilling the religious fear in our population, then I think it goes to the problem of our arguments, that it creates divisiveness.

We have many major religious groups in this state that will come in and give testimony that they were opposed to the adoption of this legislation for that very reason.

THE COURT: Would they be for it if it really advanced religion? Would that make the statute any more valid?

MR. ALTMAN: No. Well, I think their position is any time the government mandates and compels or imposes religion, that you denegrate religion. That's the next point we make.

I'm finished with that line of inquiry, other than to ask—

THE COURT: Then I asked the question too late.

(p. 47) I think your—you suggested to me that you're saying the legislature thought this would advance religion but it really doesn't. That seems to me if it really did, it would be even worse.

MR. ALTMAN: I think the legislature clearly intended this, and that's obviously the thrust of our case. They have said so as a religious act.

I think it bears recognition that if that were their purpose—and I recognize the purpose that on constitutional grounds would be improper, but I think the record should be complete and reflect the fact that it is an improper means in terms of increasing morality, even if the argument is made here—

THE COURT: You mean an ineffective means. Well, I don't know that that really is an issue in this case, that morality is improved or not.

MR. ALTMAN: Let me make—

THE COURT: Well, go ahead and ask your next question. I should have gotten to this earlier.

MR. ALTMAN: The argument from the defense is that this has some secular purpose as well.

THE COURT: You mean morality—

MR. ALTMAN: Right.

THE COURT: All right. Go ahead.

BY MR. ALTMAN:

(p. 48) Q Dr. Gilkey, you've heard the dialogue between Judge Debevoise and myself. I was going to ask you, what did you think of the statute, A Moment of Silence, in terms of a tool or a means of bringing back morality, so to speak, either in religious or secular sense to school children or to society?

THE COURT: I think you better break it up.

Q Take them one at a time.

THE COURT: You're now getting into the secular area, which goes beyond, perhaps, his area of expertise. I'll let you ask it anyway.

Are you going to morality generally, not tied with religion, but just morality?

Q Let's start with it in terms of religion.

A Well, one of the dominant elements of the American tradition in religion, not the only one, but one that finally became dominant, as we all know, was that the government, in fact, or the established order, in fact, the coercive power of the state, in fact, could not and should not enter the field of religion and in terms of encouraging it, which was the implication of the Judge's remarks, it seems to me.

And there were those who felt from the side of religion that any government's interference in religion, any imposition of particular religious formation or acts were, in fact, counterproductive to religion.

This tradition was in a kind of lonely way (p. 49) because most religious groups didn't, in fact, agree with it, was borne by, especially the Baptists and the Quakers, interestingly, because a good number of Baptists—I'm a Baptist—a good number of Baptists have forgotten their tradition, and wish to bring the state into their act.

But they were certainly convinced that religion could not be healthy if it was required. And that, in fact, a required spiritual act with the power of the state or, in this case, the school, saying you must do so and so, was a self-contradiction as a spiritual act.

They could require you to stand up, to sit down, and so forth and so on, but the inward activity essential to both religion and, I would think, morality are something you can't require. That is to say, if it is required, it doesn't exist. And if I do it because I have to, then it's not done.

And what is done, actually, is, it seems, what the result is counterproductive in the sense that it builds resistance on

the part of any healthy person. They tell me to do this, they tell me to—and so on, it builds resistance. It builds cynicism because the act is done hypocritically, and the history of, I think, of western religion, where this issue has been raised particularly, shows that where religion is voluntary, it tends to be active, creative, growing, as in the United States.

Where it is still required, it tends to be (p. 50) objective, external, on the whole, declining, let's put it that way.

I think the explanation for the relative vitality of religion in America, whether that's good or bad is another issue, and in some of the countries of Europe, is at least partly based upon this.

In this sense those who say religion is better if it's voluntary and the state says not, are historically correct it seems to me.

This point I would disagree with those who we have quoted in saying if we can bring prayer back into schools by requiring this moment of silence, that will develop a much healthier culture spiritually.

I think the facts show that doesn't happen.

MR. ALTMAN: Excuse me one moment. May I have a second, your Honor?

THE COURT: Yes.

(Pause.)

Q Do your last few remarks, the impact on religiosity, spirituality, of coercion, your argument that that would tend to negate or historically, you say, work against those—that effect, doesn't that work against—since the statute is

compulsory, at least as to the moment of silence—does that work against your argument that a moment of silence is likely to lead to objective prayer?

(p. 51) A Well, to me, my argument makes sense in the sense that I do think it will lead, in many cases—I'm not saying in all—in many cases to closing the eyes and bowing the head and, in fact, acts of what I have called objective prayer, perhaps led by the teacher. That seems to be a pretty good prognosis here.

And what I'm indicating is that that's the kind of required, objective behavior that tends to develop resistance, tends to develop a bit of cynicism about what religion is. To identify religion with this objective behavior, that doesn't mean anything and so on, and that one sees throughout the history of western life with regard to required spiritual and religious activities.

Going to church, for example. If you have to go to church, it doesn't mean anything to go to church and people object to it and so on.

I think, myself, that this is true of any spiritual activity of any importance, even if it isn't religious in the sense I'm speaking about, and I would include morality. One can't in that sense legislate morality.

I think from the side of religion, the creative thing about the First Amendment, that is to say that helps religion in that sense. It isn't a penalty to religion, that the state wasn't involved. It is a help to religion. This is what William Penn and Roger Williams, the Quakers and the (p. 52) Baptists, tried to say to the Lutherans and the

Catholics and the Episcopalians and so forth who didn't believe it.

Well, they do now, but it took a long time.

THE COURT: That was your last question?

MR. ALTMAN: One last question.

Q You earlier alluded to the devisiveness in the community. How does the fact that—you say the moment of silence will likely result in an objective prayer. How will that tend to create divisiveness in the community?

A Well, as I've indicated, in the first place, I agree with the proposition that any religious act that is required in the public schools is divisive in the sense that there are people in our society—I'm not one of them, but I'm sympathetic with them—who don't want to have anything to do with acts of religion.

I've also indicated that any form of spiritual act is particular, that is to say, it is this form rather than that form, and it excludes people who want to use that moment of silence in another way.

My own feeling is that where children don't know what this moment of silence is for, the law has not stated what it is for, hasn't given an educational content, so to speak, to it, hasn't structured it educationally. If that had been done, I would have had a different feeling about it. It is left there. It is left there for teachers and principals (p. 53) to fill in as they see fit, as far as I can see.

Now, the brunt of this law, having been passed, is that it is okay to use it in any way, and since it was identified in the public mind as a prayer law, very definitely, I don't think there is any question about that, it will seem,

and I think rightly, that the legislature of New Jersey has said it's okay to pray.

So that in any context—and, after all, a surprising, surprising number of Americans are religious and wish there to be prayer in the schools in many, many communities, this will, in fact, result in the kind of, what shall I say, general American objective prayer that I have described.

And, now, what's the problem with that? The problem with that—and I'm no expert on this, but I've read enough of these cases to know—the problem with that is that it puts students in the bind that's quite familiar in many cases either of going against their own personal convictions or that of their parents, or else suffering some kind of approprium from their peers.

That's the bind, I take it, many of the courts sought to avoid. That's precisely what will happen, I think.

As I've indicated, it is wrong to say people can freely use this for prayer if they wish. I've indicated that there are many, many groups for whom a moment of silence (p. 54) cannot be used for prayer. If they seek to use it for prayer, they will break the moment of silence.

MR. ALTMAN: Your Honor, we have no further questions for Dr. Gilkey at this time.

THE COURT: Why don't we take a ten-minute recess.

MR. ROBERTSON: That will be fine, Judge. During the recess, perhaps I can ask Dr. Gilkey to look at the copy of the Act.

THE COURT: Yes, during the recess. All right. A ten-minute recess. Dr. Gilkey, you can step down and read what Mr. Robertson gave to you.

THE WITNESS: Okay.

(Recess.)

THE COURT: Dr. Gilkey, would you come back?

THE WITNESS: Yes, sir.

LANGDON GILKEY, resumes.

THE COURT: Yes, Mr. Robertson, are you ready to proceed?

CROSS-EXAMINATION

BY MR. ROBERTSON:

Q Dr. Gilkey, before we adjourned I provided you with a copy of Public Law 1982, Chapter 205, the same Act that Mr. Altman has referred to as 1064.

A Yes, sir.

* * *

(p. 60) A No.

Q Now, Doctor, I've given you the Act.

A Yes.

Q Have you had a chance to review it?

A Um-hum.

Q Does the Act in any way—withdrawn.
Does the Act indicate that there is—withdrawn.

Is the word "meditation" used in the Act at all?

A Well, I think this came up before. The word "contemplation" is used. And as I've been using the word "meditation," I've used it as a synonym, perhaps with different tonalities, but not very significant ones as far as I'm concerned, to meditation. That is to say, I would take contemplation and meditation to have the same force.

Q Do you limit the definition of the word "contemplation" to meditation?

A Well, contemplation, it seems to me, if we are now talking about the nuances of difference, in my discipline they are use, roughly, synonymously.

Contemplation seems to bring forward the idea of an object more than meditation does, though not necessarily more. That is, contemplate, you can visually contemplate a vase, for example, or a flower. And it—otherwise I would say the two were used quite synonymously.

Certainly as I indicated, I hope clearly, both (p. 61) can be used in a religious and in a secular context.

Q Thank you, Doctor. That was my next question.

Do you acknowledge that there are secular meanings for the word "contemplation"?

A I do, and I did in my testimony, if I remember correctly.

Q With regard to the word "introspection," do you acknowledge that there are secular meanings to the word "introspection"?

A Oh, yes, absolutely.

Q Now, Doctor, I think you testified late in your direct testimony, that one of the problems with the Act

was that the state has not put forth any educational content. Would you please explain what you mean by that?

A I would expect that if something were to be a creative part of a curriculum, in the first place, that it would emanate from those who are involved in forming a curriculum, namely, the education department and teachers, principals, so forth, so on, and that it would be structured as an educational program, enterprise, device, whatever word we wish, and I can well conceive—and I don't mean to say I can't, I don't mean to deny this point—that a—the Department of Education of the State of New Jersey might, in whatever way it comes about in a decision like this, say we wish to introduce into the curricula of the state a program of (p. 62) meditation or contemplation or introspection and structure this as an educational program.

I have suggested that if they were going to do this, they would find themselves very limited if they had only a minute to do it. And I made that point rather forcefully and I am convinced of it.

But if they said we think for ten minutes a day this would be a very useful think educationally, I don't deny that's possible. I would think that if they were going to do that, they would give it a certain structure.

Now, by structure I mean they would say how you're going to use it, and perhaps most important, they would say how this would differ for kindergarten, for sixth grade, for high school, because it is inconceivable it would be the same.

As I say, I'm no expert, but I know enough to know that this—the use of such a thing would be different in kindergarten than it would be in senior high school.

That's what I mean by an educational program coming forth as an educational device, if that's the right word.

The history of this legislation gives to me no indication of such a generation, such origination, such a purpose, so forth and so on.

Q And that's the history referred to earlier with regard (p. 63) to newspaper articles?

A And the history of the legislation, that is to say, I can't sight you chapter and verse, though I've been over it several times. There is a history of similar laws which have increasingly lost their prayer character, let's say.

Q Evolved, as it were?

A Evolved implies improvement. I don't know. They have changed. They have changed.

Q They have changed from what—

A Incidentally, the same thing happened with the creationist laws. They got less and less specific about the religious content as, so to speak, they were thrown back further and further on the football field. They got less specific.

Now, that's my interpretation of this history.

Q Do I take from that statement that the present Act that is sitting before you is less specific about its religious content?

A Yes, quite evidently so. And my point is, of course, that doesn't mean it doesn't have a religious purpose, intent, so forth, so on.

Q Now, Doctor, I will attempt to summarize my understanding of some of your points. Please feel free to correct me.

Do I understand you to say that it is your (p. 64) opinion that this Act, as written. will cause children to pray?

A Yeah. Do you understand me to say, and you want me to revise that to state what I intended to say, that this Act, when implemented, will cause—cause is all right, it sounds forcing, and I don't mean that—but the result will be, let's say, that is, the use of the word "cause," the result will be that great numbers of children and, I suspect, teachers, classes, will use that moment of silence mandated here—though the word "permit" is here, and I don't quite know what that word means, but that's another point—that will use that mandated moment of silence for prayer, for bowing the head. closing the eyes and to all visible intents and purposes, praying. That is certainly my expectation.

Q Intentionally use the word "cause." Is it your testimony that this moment of silence will not necessarily cause prayer?

A Well, it all depends on what you mean by "cause." I'm perfectly happy to discuss this word with you. You seem to be making a good deal about the word.

Q Dr. Gilkey, let me ask you another question.

A All right.

Q Will this force children to pray?

A No, no. It will not in any direct sense force them to pray. I wouldn't use the word "force." It will force

them (p. 65) into a situation in which it may well be, and I would expect it would be uncomfortable for a number of them, if they don't pray.

And that, I take it, is the substance of a good number of these cases with regard to the establishment of religion; that there is a situation, no one is ever forced to pray. People are forced to be silent, close their eyes, I suppose, bow their head.

I've indicated you can't force any subjective activity of that sort. However, you can force or mandate a situation in which people are made uncomfortable if they do not.

Q If they do not engage in this subjective activity?

A Engage in—well, engage in closing their eyes, bowing their heads, assuming an attitude of prayer. Let's put it that way.

Q Assuming outward manifestation?

A Right.

Q And talking about subjective activity, prayer as you've defined it?

A No, I said there is objective prayer.

Q Focus on subjective.

A Well, you can't force that at all. I've made that point.

Q Would this Act result in forcing subjective prayer?

(p. 66) A No Act can force subjective prayer. But objective prayer is still objective prayer and people object to that. I know many groups, for example, Islamic groups,

who would regard it as blasphemous to be involved in objective prayer of a different sort than their own.

Q Doctor, does the Act mandate children should close their eyes, fold their hands, bow their heads?

A No. It doesn't mandate anything. It says "permit." And I would like to hear you say what that means.

Q Doctor, in all due respect—

THE COURT: No, Mr. Robertson.

This is your turn.

THE WITNESS: That's right, that's out of order. I withdraw it.

Q Thank you.

A Right.

Q Does the Act—so that we are clear in your answer—mandate direct command, closing eyes, folding hands, bowing the head?

A No. It mandates, as I understand the word "mandate," as you're using it, it mandates a moment of silence.

Q Does it compel any of those activities?

A No.

Q Does it compel objective prayer?

A The Act does not. I'm indicating that my view of the (p. 67) consequences of the Act is that that's what it will be used for.

Q Doctor, believe me, I will give you the opportunity to get to the consequences. I wanted to focus on the Act.

A Right.

Q Does the Act mandate—

A Not on the surface, on the face, as the lawyers say.

Q On the face of the language, none of those acts, subjective or objective, are mandated?

A That's correct. That's correct. The face of the Act does not.

Q Would it be fair to say what the face of the Act—nothing is compelled on the face of the Act except silence?

A Well, the duration is compelled. I take it a moment is compelled.

Q 60 seconds of silence?

A Right.

Q Doctor, does the Act direct that teachers partake of the moment of silence?

A I suppose it tells them they can't talk.

Q Would you read the Act, sir, again, please?

A Well, one interesting thing about the Act is you don't have silence if anybody talks. Now, if you can conceive of a moment in which the teacher is talking, and you have a moment of silence, you're better than I am.

(p. 68) I think a teacher has to be silent here or get out of the room.

Q Would you read the Act out loud, Doctor?

MR. ALTMAN: Your Honor, the Act speaks for itself.

THE COURT: Mr. Robertson wants to make inquiry about it. So, would you read out loud?

A Sure. "Principals and teachers in each public elementary and secondary school of each school district in this state shall permit students to observe a one minute period of silence to be used solely at the discretion of the individual student before the opening exercise of each school day for quiet and private contemplation or introspection."

Q Does the Act direct that a teacher participate as a participant in the moment of silence?

A It seems to me to do so or else get out of the room. And I've indicated why I say that. But I don't think that he or she can talk.

Is this part of the cross-examination?

THE COURT: Someone doesn't like you, Doctor.

Q If this were a Quaker meeting, Doctor, I would have my own idea.

THE COURT: You will have second thoughts about visiting New Jersey again.

THE WITNESS: I must have said s[illegible]thing wrong.

(p. 69) Q Doctor, silence, quote, unquote, is silence religion?

A Not necessarily, no, obviously.

Q You, therefore, admit that silence has secular connotations?

A Yes. I think I've said that.

Q You are not an educational expert?

A Correct.

Q Do you know whether silence has any use in the educational enterprise?

A I don't know it. I can well imagine that it does or could have. And I've specified, I think, that point.

Q Doctor, you have testified that there are certain—I think your term was "novel religions," and that's not by me meant to be perjorative?

A New is a better word.

Q Emerging religious identifications or associations in our society.

A Right.

Q Could you specify those and give us some quantification of what they are?

A Well, the Unification Church is the best known. That is, as far as I know, not a traditional religion, though any religion is made up of traditional components, so to speak. That is the Moonies I'm referring to.

There are a number of others.

(p. 70) Q By gesturing, I really want you to take both parts of my question. Specify what it is, and give us a quantification of its presence in our society, and American society.

THE COURT: Quantification, the number of adherents?

MR. ROBERTSON: Judge, if he knows. That's an acceptable answer too. If he does not have a—

A I really would hesitate to say, how many, for example, the Unification Church has. And I certainly don't know how many in New Jersey.

Q All right.

A There is a sizable number of young people involved in that movement.

That's Unification Church. Next?

A Well, there are a number of them. When I use the word "new," I meant new to the American scene.

Now, if you add to that various forms of Hinduism, various forms of Buddhism, especially Zen, the Sik groups, which have Ashrams in many centers in New Jersey. There are monasteries in Southern New Jersey of Tibeten Buddhism that I have visited.

These are new in the sense that they weren't there 50 years ago. The religion is certainly not new in the sense that it has been on the globe for a long, long time.

Q We were speaking in the context of emerging in our (p. 71) culture and our society?

A That's right.

Q Are there any others, Doctor?

A Oh, many, many others. Sufism—Sufism, is a form of Islam. The Black Muslims are also new, not quite that recent. I mentioned Synanon, that's largely California. There was the Jones situation that we knew about. There is the Gurkhaic group.

Q Excuse me, Doctor, could you amplify on that?

A Well, now, I mean, my own expertise here will run out after ten more minutes, let's say, of reciting these names. I will be glad to do it if you want to hear them.

Q I do, Doctor.

A Well, the Gurkhaic group, the Synanon.

Q What type of religion is Synanon?

A Well, that's a combination of psychology and religion. It began as a psychology and ended up as a way of life encompassing almost every aspect of one's behavior, and, therefore, fits in pretty much with my definition of religion.

Now, from here on I'm going to start talking about different formation of Hinduism and different forms of Buddhism; the Hari Krishna, for example; the various meditation sects; the Zen groups; the Ahmadi Buddhist groups.

THE COURT: I think he has exhausted his present recollection, so let's move on to another question.

(p. 72) Q I think you've testified, Doctor, that this—these particular religions will not be able to use the moment of silence for prayer.

Could you tell us, using some of them as examples—you have given some on direct—why or what prayer form they adopt that would prevent them from using the moment of silence?

A Well, Hindu groups and Buddhist groups would use the moment of silence as a spiritual act for meditation, and meditation for those groups would involve the seated posture, a seated posture.

Q You better stop here at that point, Doctor.

A It would involve—

Q Let me interrupt and ask a question.

Is there anything in the Act that would prevent someone from being seated during the moment of silence?

A No, nothing.

Q Okay.

A The point is, though, that a child who was told by its parents to be seated and cross-legged would not be unnoticed by all the other students, and you would, therefore, have created precisely the divisive situation that the courts have sought to—that's exactly what I was talking about. That a person either had to submit to other convictions of a religious sort or submit to whatever kind of ostracism or (p. 73) scorn or laughing or whatever by being substantially different.

This is, I think, a principle well recognized in the courts.

No, it doesn't mandate you can't sit. It does mandate you can't say anything. And there are forms of prayer, some of which I've mentioned, which do involve speaking.

Q Such as?

A Well, Islamic prayer.

Q What type of speaking is required for Islamic prayer?

A Calling on Allah.

Q Is there a particular posture that must be—

A Yes, you better. You have a prayer rug and you get down on the floor and you put your head on the floor. You prostrate yourself.

Q Doctor, are you generally familiar with the every day activities in elementary and high schools in this country?

A Yes.

Q Is there an opportunity for someone who is Islamic to engage in such activities?

A Yes, there must be, if they are Islamic. They have to be.

Q Is it normally provided in the schools in this country?

A Yes, opportunities for prayer are provided in the (p. 74) schools. This is very clear in our brief, that there needs to be no law for that.

Q Your brief, Doctor?

A I mean the brief that was put forward, that there are already opportunities for silence, prayer, this, that and the other, if a student wished to do that.

Q Could you tell us where you are personally familiar with those opportunities being accorded, where someone who is Islamic is provided an opportunity on the school grounds to get down on his rug and to engage in his prayer?

A I'm not familiar with how that's handled in the public schools, no.

Q You have, therefore, no personal knowledge that that, in fact, is the fact?

A Is provided, no.

Q Would that be true with regard to particular forms of prayer engaged in by the other groups that you have talked about?

A You mean would it be true that I don't know about it?

Q Yes, sir, that's my question.

A I don't know how opportunity for them to pray the way they want to pray is provided, and, in fact, I don't —Islam is the one that is required to do this.

Q In fact, you don't know if it's provided at all?

A Insofar as a person is able to absent themselves from (p. 75) their peers and in the normal life of school most forms of prayer are available to a student during the day.

Q It is your testimony, however, that these students, of the groups that you have identified, will be frustrated by the moment of silence because it does not accommodate their particular forms of prayer?

A Insofar as the moment is used for others to bow their heads and close their eyes, and the others are suggested by their parents or by the teacher that this is an appropriate use of this moment, and there is no reason it shouldn't be, in terms of if the legislation is passed, as I've suggested, these others will not be able to pray in their fashion. That's what I'm suggesting.

Q Doctor, do you have any empirical data which indicates that that will in fact happen, that children will bow their heads, fold their hands and manifest some subjective prayer?

A I have seen a picture of a New Jersey school in which all the children are bowing their heads.

Q Doctor, are you aware—

A I suppose that's empirical.

Q Are you aware of any empirical data which would tell us, this Court, that the child was praying?

A This is empirical data, data that the child is undergoing, or enacting an attitude of prayer.

Q And where is that empirical data to be found?

(p. 76) A That they are bowing their heads, closing their eyes, so forth and so on.

Q Are there any studies that validate that opinion that you are aware of?

A No.

Q Behavioral studies?

A No.

Q Do you associate a bowed head, folded hands and closed eyes with closed eyes with prayer?

A Um-hum. Um-hum.

Q Are there any studies that validate that as being invariably the case?

A Didn't say when I associated with prayer that it was invariably the case.

However, I think it is obvious that this is, in the majority of cases, or in a great number of cases, if a particular act or attitude represents an act of, as I've said, objective prayer.

Q So that we understand your testimony, the testimony is that the Act in front of you, would you agree that it permits a student to assume that outward posture may create the impression in others not participating that the student is participating and in that way will be divisive?

A Well, I assume that the students talk to one another as well as observe one another, and that, I assume, also the (p. 77) American public being the way they are—which I have no quarrel with, in fact, I will permit—being interested in religion, religious, so forth and so on, that the use of that moment—and I think this is what was intended—the use of that moment will be to enact an attitude of prayer, to put it that way.

Q Create an atmosphere—

A And I assume that people say what did you do, and a lot of kids will say to others, I was assuming an attitude of prayer.

Now, for a second grader to use that phrasing is, of course, absurd. But that's, in fact, what they will be doing. They will know the other kids are doing it.

I would assume that a number of teachers would say —when the students say what are we supposed to do—say, bow your heads.

Q And that, Doctor, you believe will be destructive?

A Yes. I assume that it is generally agreed that any mandated or, well, mandated act of religion is regarded as destructive. That's my whole argument.

Q Doctor—

A But that's why various elements of religious activity have been declared not to be appropriate in the public school.

Q Doctor, would you tell us what Thursday, September 8, was?

(p. 78) A Pardon me.

Q Thursday, September 8, last week, what was it?

MR. ALTMAN: What do you mean? Your Honor—what do you mean, "What was it?"

MR. ROBERTSON: I'll clarify it.

Q Was there a particularly significant religious holiday last Thursday?

A Yes, a Jewish holiday.

Q What was that holiday?

A It's the Jewish new year.

Q Rosh Hashanah?

A Yes.

Q And were Jewish children, to your knowledge, permitted to leave the public school system and go to their place of worship?

A I assume so. I don't know that for a fact.

Q Doctor, assume that they were.

A Right.

Q At lease in the state of New Jersey.

A Right.

Q Is it your opinion that a non-Jewish child—asking a Jewish child about what he did or she did on Rosh Hashanah will be divisive?

A No.

MR. ALTMAN: Your Honor—

(p. 79) A No, no.

THE COURT: I'll overrule the objection.

Q Would you distinguish for us, please, that fact and what you're concerned about—this Act might do?

A Well, I think it one thing for a student to leave the school premises to go to a, what is a private, in this sense, institution, namely, a synagogue or a temple, just as it would be quite appropriate on Good Friday for a Catholic to go to church. That's one thing. That is what take to be the accommodation of the free exercise of religion that is recognized as characteristic of this country's public services.

That's a quite different thing from carrying on or allowing to be carried on a religious activity on the premises of the school as a part of the school program and mandated by the legislature.

I think that is an entirely different thing. I think the courts have recognized that's an entirely different thing.

Q Haven't we just agreed that the Acts does not mandate any particular activity?

A No. I've indicated that what I think the use of the Act will be, and I've also indicated what I think the intent of the Act will be.

Q And you've indicated, have you not, that there is no (p. 80) data or study that you are aware of that will validate your assumption of how the Act will be used?

A No, because it hasn't been done yet, as far as I can see.

Q That was my next question.

Are you aware of the Act, silence for a moment, to be used by students for whatever reason they wish?

A Whatever purpose?

Q Whatever purpose.

A Yes.

Q As resulting in outward, overt manifestations of prayer?

A Well, I take it that everybody assumes when I've talked about this, that I am giving, I suppose, one could say, expert testimony on what the probable use of this Act will be. Certainly isn't that I know what's happened because I don't think it's happened.

Q That's correct, Doctor. And you've been very candid about that.

My question was, are you aware of any studies or are you aware that the Act has, in fact, be used?

MR. ALTMAN: Question has been answered, your Honor.

MR. ROBERTSON: No, I don't think so.

THE COURT: Overruled. Go ahead.

(p. 81) A No, I'm not aware of any studies, no, no.

Q By the way, Doctor, are you aware of the practice of several of the children, our children, who are Jewish, wearing yurmulkes in class?

A I'm certainly aware of older children, let's say students at a higher level wearing them, of course.

Q Do you think that creates any divisiveness?

A I said no. I guess you didn't hear me.

Q I didn't hear you.

A No, sorry. Again, I think that that's a very different matter, totally voluntary matter. You're dealing here with something the whole school does as part of the school program.

Q And what does the whole school do according to the Act?

A The whole school stops for a moment at the beginning and has a moment of silence together.

MR. ROBERTSON: Judge, may I have one minute? I may be done.

THE COURT: Yes, sure.

(Pause.)

MR. ROBERTSON: Thank you very much, Doctor.

THE COURT: Any redirect?

MR. ALTMAN: No, sir.

THE COURT: Thank you very much. You may step down.

(Witness excused.)

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(p. 83) THE WITNESS: Peter J. Kuriloff, K-u-r-i-l-o-f-f.

DIRECT EXAMINATION

BY MR. ALTMAN:

Q Dr. Kuriloff, what is your present position?

A I'm an Associate Professor of Education at the University of Pennsylvania.

Q And how long have you held that position?

A Since 1970 .

Q Would you describe very briefly your educational background, again starting with postgraduate studies?

A I received a doctorate in education at Harvard Graduate School of Education. My specialties were in counseling and school psychology. That involved both learning about psychology, and also learning about the field of education.

Q Now, you just mentioned or alluded to a particular area of concentration or study.

Since you began your teaching career, have you had a particular area of concentration?

A Yes. My research and teaching involved two major areas. The first, starting with my work on my dissertation involving social psychology of class rooms and how problems that have previously been defined, or are sometimes defined as adhering solely in the individual child can be construed as problems that occur in the context and transactions among people in the classroom.

(p. 84) The goal of that research was to show that teachers don't necessarily have to refer every kid out for special help, especially when there is very little special help, but can find ways to intervene to help children within the classroom.

And then on that—following from that, I did studies on—within the same framework on discipline in the classroom and discipline in the school and the experience people had in controlling and helping students behave.

I taught a great deal about something called deliberate psychological effect on education also following from that, which is a body of theory that emerged starting in the '50s about how you can engage students more fully in the curriculum.

Q Can you tell us where you made your studies into discipline—

A Do you want me to finish the second—

Q I thought you were finished.

A I studied disciplinary issues in the junior high school.

Q I'm sorry. Finish your answer. I didn't mean to interrupt.

A Okay. The second area of my expertise is on the legal reform of education. I've studied how courts and Congress have created laws with the intent of changing what goes on in (p. 85) schools, and with the idea of discovering how people comply, when they comply, when they don't comply, whether the legal—the legal models, the best models for educational decision making, specific con-

tracts, like special education and disciplinary cases under Goss v. Lopez. The courts require that you have to have a hearing if you suspend a child for more than three days.

Q Going back to the first major concentration I think you indicated was the study of discipline in the educational process.

A Right. I spent several—two to three years in the junior high school in Philadelphia studying what was going on in that school to help the students that cause trouble in the school.

Then later I spent four years working on a national project that looked at the consequences of requiring due process hearings, mini due process hearings, for suspension cases. That study, I examined schools in the Philadelphia area and my colleagues who were working in Pittsburgh, and we put that data together at that time currently being written for publication.

Q Can you define for us the context of public school education and psychology what is meant by small group process?

A Well, small—everyone works in a variety of small group context. Your family is a small group. Classroom is a (p. 86) small group. The processes or the dynamics that happen among people in those classrooms, or in those settings, like a family, that cause people to behave in certain ways.

I'm interested in both how people affect groups and how groups affect people. So I'm interested in peer pressure; I'm interested in how one can change negative norms in groups, where, for example, gangs, or some kind of be-

havior in fraternities that lead to negative behavior, and how you get groups to react in ways that are more socially constructive.

Q The principle involved in studying the small group process would be implicated in both your study of discipline in the schools as well as implicated and utilized in your studies with regard to due process, so to speak, for schools?

A Yes, although the format is somewhat different. The dynamics are what interest me in both those cases.

Q Would you explain what you mean there?

A Well, due process hearing, you have a proscribed format, but there is quite a bit of variation in it. The interesting thing is how on people are affected by the variation. Do they—do the students or teachers perceive themselves as being more or less fairly treated if you vary the format?

What happens among people covertly and subliminally, for example, the testimony in this courtroom (p. 87) versus what's going on in the more subtle, interactions that happen to be between people.

Those all have influences, and I'm interested in studying them in a classroom particularly.

Q You don't study them just for the sake of discipline or the sake of due process. They are studied in the context of their impact on a learning situation or the educational proceess?

A Yes. Currently I also have a project going on, one publication is now in press, the others are in progress, on how small group process affects learning in college classrooms.

Q I take it from your earlier answer, but I think it was a little bit vague, that you have done direct observation in the classroom, or have you done direct observation?

A Yes, I have.

Q Of students?

A Yes, I have. I spent substantial amount of times early in my career, in junior high classrooms, and I spent substantial amount of time in the last few years studying senior high school.

MR. ALTMAN: Your Honor, we also have a curriculum vitae for Dr. Kuriloff. It is Exhibit Number 72. That's among the documents that I submitted to the Court earlier.

(p. 88) MR. ROBERTSON: No objection, your Honor.

THE COURT: All right.

MR. ALTMAN: And I would submit that Dr. Kuriloff is qualified as an educator and psychologist.

THE COURT: Voir dire?

MR. ROBERTSON: I'm sorry.

THE COURT: Any voir dire on the expert?

MR. ALTMAN: As an educator and a psychologist in the educational context.

MR. ROBERTSON: Voir dire on education, if I might.

THE COURT: Yes, go ahead.

VOIR DIRE EXAMINATION

BY MR. ROBERTSON:

THE COURT: P-72 in evidence in the meantime. (Exhibit marked P-72 evidence.)

Q Doctor, other than what you have described, have you been engaged in any activity that is hands on teaching of secondary and elementary school children?

A Only very early in my career, but early in my career, yes.

Q Where was that?

A That was through the—Boston University, Sergeant School Campus. I was in college an instructor with elementary students.

(p. 89) Q What context?

A I don't understand what you mean in what context.

Q What type of a course?

A Well, students came regularly from the public schools for a week at the nature camp in Peterboro, New Hampshire. I was an instructor, a nature instructor. I spent my time working with those students.

Q My question is, have you had classroom experience as an elementary or high school teacher?

A No.

Q Have you had experience as a lecturer and an educator of those teachers?

A Yes.

Q In what disciplines?

A My discipline is psychology. I'm a professor of education.

Q All right. Have you taught or are you now teaching curriculum content, structure, teacher, principal administration or any other subject?

A Most definitely.

Q What?

A I taught from about 1971 to 1973 a course that specifically is designed for students who are going into administrative, secondary and elementary administrators. One of my students in now the superintendent of schools in (p. 90) Newark, Columbus Sally.

All of my classes, with the exception of very specific ones that are trained to do psychotherapy, are open to graduate students of education from any discipline. So I regularly have reading teachers, elementary education students and students who are studying to be teachers at any level in the public schools.

Q Would you classify yourself as an educator of teachers?

A Among other things. I'm an educator of teachers and an educator of psychologists.

Q Your teaching experience, hands-on teaching experience is limited to the summer camp program you described?

A Yes, with elementary students.

MR. ROBERTSON: Judge, I'm not going to quarrel over his qualification as an educator. He is a qualified,

highly documented educator. With the caveat, I do not agree that he is an educator whose experience may be particularly appropriate here. I will agree he is qualified as an educator expert.

THE COURT: All right, then we can proceed with your questioning.

BY MR. ALTMAN:

Q Doctor, are you familiar with the statute that is referred to as the Moment of Silence?

A I am.

(p. 91) Q And were you asked to review that statute?

A Yes, I was.

Q For what purpose?

A For the purpose of commenting on its psychological and educational implications in the classroom.

Q Did you reach any opinion as to the value of the moment of silence as an educational tool or instrument?

A Yes. I think that its value as an educational instrument is marginal and perhaps harmful at best. At best, marginal and at worst, harmful.

Q From a psychological standpoint, did you reach an opinion as to the impact of the moment of silence?

A Well, I think it has varying impact, depending on the age group that we are speaking of, ranging from the capacity to make younger students quite anxious to opening up older students to peer pressure.

I also think it is a potential disciplinary nightmare. That's through the vagueness of the statute which allows —permits students to have a moment of contemplation, a minute of contemplation at their sole discretion.

I think that that opens up quite a can of worms for controlling classrooms.

Q Now, if you can, for a moment, let's focus on the so-called educational component of the moment of silence or purpose.

(p. 92) Can you tell us why, or what basis you reach the conclusion that at best it has minimal value and at worse, the worse can cause, I think you said, some anxiety?

A Well, it can't have an educational value because it is an empty sack. There is no curriculum base for it. It has no stated objectives. It has no plans for reaching those objectives.

It has no directions for teachers on how to do that. There is a vast variety of literature on the use of silence for contemplation and meditation that can focus—that is developed in the last 20 years. It doesn't refer to any of that literature.

It essentially creates a situation in which students are exposed to a full minute of quiet, which is a very long time psychologically. If we were to sit here for a full minute together in silence, I think we would be able to experience how long that is.

For little children that can be quite anxiety provoking. Even for adults it can be quite anxiety provoking, depending what the authority of the situation is doing.

Furthermore, it invites—well, it depends on the age group we are talking about. It invites younger children to model or identify with the behavior of their teacher. To the extent that some teachers are religious and use this either consciously or subconsciously to engage in (p. 93) prayer, it invites younger children to experience the pressure of identification with their teacher. And for older children, it opens up several possibilities; the first, with junior high and high school students, it opens them to peer pressure, depending on what the majority or the key group in the classroom is doing with that silence. It can put pressure on other kids.

Q Let me go back and ask you some questions to try to flesh out remarks you made with regard to the educational component.

What do we mean by a curriculum component?

A Well, a curriculum is a coherent plan for conveying a body of information or for—and for engaging students with that body of information—

Q Now is it your testimony—

A —for their learning.

Q And that's what's lacking in the moment of silence as an educational tool?

A Yes, completely lacking.

Q Now, cansilence, meditation and contemplation in the school room have educational value?

A Absolutely.

Q And what would you have to do to give it educational value?

A Well, you have to develop—there is a whole body of (p. 94) literature on teacher management that shows that effective classrooms, especially classrooms that where not only students learn best, but also are best behaved, are run by teachers who have very clear, pre-thought out plans about engaging students in activities, about moving the activities along, about having rules, simple rules that are clear and acceptable and understood by students, and that the teacher follows up and is consistent and fair about initiating those.

A curriculum involves the plan that you do, that you have to teach them, to teach them subjects.

Q Do you think a meaningful curriculum can be developed in a 60 second moment of silence?

A It be developed in a minute.

Q It cannot?

A It cannot.

Q What about meditation? Do you think that meditation has a—might have a beneficial place in the school room?

A Yes.

Q Meditation in the secular sense?

A Well, meditation, the origins of meditation are all nonsecular. But meditation in this century, especially in the last two decades, has a secular sense and can be very useful.

There is scientific evidence that shows that it helps reduce stress. It reduces people's blood pressure. It helps people relieve their tension.

(p. 95) It has a very strong physiological component, but you need 20 minutes at a time to do meditation.

Q And contemplation, do you distinguish that from meditation in this context, that is, in the school room?

A Well, they tend to be very related terms. Contemplation tends to be, I think, more general and vague. And contemplation, there is a place for contemplation.

Again, if contemplation is without purpose and direction, it is dangerous in terms of good manners in a classroom.

If is it directed and used for curriculum purposes, like the contemplation of a play, the contemplation of the motivation of a character, the contemplation of a piece of music, and that that's focused and students have a structure that they use to conduct their contemplation, it can be very valuable.

There is curriculum that have been developed that use that.

Q But in the absence of giving direction to the children, I take it that your opinion is that contemplation can have no real educational value?

A It has no educational value. It can be harmful.

Q Let's go to that.

You indicated earlier that the effect of the moment of silence would vary according to the age group in the(p. 96) public school. Can you take the younger children? You alluded to anxiety before. Explain to us what you mean by that and how does that come about by the implementation of a moment of silence?

A Well, a minute of silence is a very difficult thing for kindergarten students or first grade students or third grade students to manage. I don't think its possible to manage.

A Well, a minute of silence is a very difficult thing for kindergarten students or first grade students or third grade students to manage. I don't think its possible to manage.

As a matter of fact, the only study that I know about this was the Thompson study that was presented in Duffy versus LaCruz.

That study makes it very clear that students—that the younger group could not manage a minute, and teachers forgo, forewent, didn't use the whole minute.

Q For the record, that study you're referring to is the study that was done by Dr. Thompson who has been identified to you as an expert witness for the defense?

A Yes. You sent me that study with his testimony in deposition.

I examined that study, and it shows—he discusses quite clearly the younger children have a difficult time with it.

He doesn't distinguish in that study age groups. He says specifically the younger children couldn't manage it and the teachers have abandoned the full minute.

In the gross findings he doesn't distinguish age (p. 97) groups. But what he shows is a significant number of children, 26 percent, did not like it, and the terms they used connote anxiety.

Q For example?

A For example, they talk about not liking it, feeling uncomfortable with it. It drives me crazy. They use terms like that.

These are within the document that was submitted in that case and that I have.

Q I take it that anxiety is not conducive to the learning process?

A No. What happens when children get anxious, just like when adults get anxious, they start acting, misbehaving, start acting out.

Q What is your opinion as to, say, a junior high age student? What opinion do you have with regard to the effect of the moment of silence on them?

A Let me say something that's general for all three groups and then I'll come to that.

I think that for all three groups it does another thing. When students come—and this is supposed to happen before school. I don't quite understand what that means in terms of—the law says before school. I don't know whether that means they stand around and—before they come into the classroom or they come into the classroom. It's vague on that (p. 98) point in my understanding. But I presume that it means as they start school. And what happens is to the nonstructured moment of silence, allows all three age groups to continue their private thoughts so they come in from the playground with all kinds of private agendas, all kinds of private activities, and this allows them to continue.

It doesn't have the effect of focusing them and getting them going.

Elementary students, and junior high children especially, what you want to do is engage them immediately in activity. That's collective and focused.

Q Just in that regard, traditionally there are what's known as opening exercises in the public school. Do they have a value in the educational process?

A Yes, I think they do. Aside from—these are usually Pledge of Allegiance, salute, a patriotic song, a regular song, school song.

Q School announcements?

A School announcements.

What those do, contrasted to an unstructured moment of silence, is they focus students on a collective activity that's related to the educational product.

They help students shift from their private inner world to the collective, direct purposeful world of the school.

(p. 99) So, I would distinguish them and say this is a much more appropriate enterprise—activity.

Q Shifting slightly to—I guess it's mixed—we talk in terms of the psychological affect and the educational affect. Is it correct to say it is hard to distinguish between them at times?

A One bears directly on the other.

Q It's—

A It's hard to learn when you're anxious.

Q It has been suggested that the moment of silence might be an appropriate vehicle for bringing calm and or-

der to the classroom at the beginning of the day. I think you made some allusion to that. Could you expand?

A I think it is a misused vehicle for doing that. First of all, it is not at all clear that the common order is what—is—in that sense is what is the first order of business? The first order of business is getting the students engaged in some kind of collective enterprise that involves learning. The moment of silence delays that.

Second of all, as a strategy, silence is one of many the teachers use to control students. And the control of students is required in a variety of times during the day and in a variety of context.

To the extent that this mandates a rigid use of one strategy, the opening of the day, it tends to dull what (p. 100) might otherwise be a sharp instrument.

Q Meaning by the sharp instrument you're referring to the tool of silence?

A Right. For example, a teacher will turn off the lights in an elementary class as a signal that the students have gotten out of hand and everyone has to be quiet.

This tends to routinize that and remove her or his judgment about when silence is an appropriate vehicle. It interferes with the discretion of the teacher. That, I think, is always a mistake.

Q So I take it that the silence, if it is not structured at a particular—routinized at a particular time, but left to be utilized by the teacher in a given situation, might be an effective educational or disciplinary device?

A Yes.

Q We talked about calming. That is same argument —I think it's the same argument that has been posed in terms of a transitional period.

Would you view that the same, and if so, I assume your answer is the same, if you would see a transitional period from nonschool to school as being something different than bringing order and calm? And would you relate to us whether you think it would be effective for that purpose?

A As a transitional device?

Q Yes.

(p. 101) A I think teachers have a variety of transitional devices, and this would be quite a poor choice.

As I said before, the literature on effective discipline and effective classrooms shows that the best transition is when students come in and they know what they are supposed to do and they begin engaging in that activity immediately.

This is a pause without content at the beginning of the day, whose purposes are unclear. All of that violates those principles.

Q Incidentally, are there times, do you have an opinion—can you tell us whether there are times during the course of the day when the need for a claming device or a transitional device are more important that at the beginning of the classroom day?

A Yes. It depends very much on the age of the children, but it is very clear that disciplinary problems occur in transitions after school begins; for example, from lunch back to school, between classroom, as students go

from one classroom to another, later in the week, later in the semester, and in front of every vacation and after every vacation. So that transitions become more difficult and almost predictable ways.

Usually young students come in eager to go to work and ready to go to work. So the elementary level, that (p. 102) transition, I think, is inappropriate. I think you can put them to work. I think that I'm in accord with a great body of research literature.

Junior high students have enormous amount of private agendas going on that preoccupy them greatly, and teachers have to spend quite a bit of time getting them engaged in school. A lot of it has to do with how they relate to their peers and how they are doing socially.

The moment of silence opens the classroom for a continuation of that.

Q You indicated earlier that you had studied what you called group processes or small group processes, the psychodynamics of the interaction of children in the classroom.

Can you tell us whether you have an opinion—and I think you did allude to impressionability of school age children—but can you tell us what the dynamics generally are between, say—let's take first the elementary level child—between one another in terms of whether you have an opinion that if one or two children are praying or more are praying what effect that might have on other children in the classroom?

A Well, for the very young children, the issue is how the teachers behave primarily. The teacher tends to be a

surrogate mother. The vast majority of elementary teachers (p. 103) are women, and for young children, it is the first significant outside the family that they work with, usually.

To that extent the two—the young students openness to influence by those early teachers is enormous.

To the extent that there are a percentage of teachers who use that overtly to pray, there is a strong chance the students will be influenced to do so likewise.

There is some evidence—it varies very strongly regionally—but there is strong evidence that a small to a large proportion, depending on what part of the country you're talking about, teachers do pray.

Q And is there evidence that in those areas where the teachers do pray that the children follow and and pray themselves?

A There is no—I know of no research study that says that. What I do know is that there is strong evidence that teachers are very—that students, young students are very responsive to teachers and model them.

So I think I would be comfortable as an expert saying the likelihood of that is very strong.

Q When you say prayer, or pray, are you saying that teachers would be praying out loud or would the same conclusion—would you reach the same conclusions if the teacher merely took an attitude, or a prayerful attitude by, for example, bowing his or her head, closing their eyes, (p. 104) clasping their hands?

A People communicate in a variety of ways besides orally. And to the extent it is an oral prayer, students are

likely to be directly influenced. In the sense that teachers strike an attitude, the young student is likely to mirror.

I think that—well, I know, at least the survey data are quite clear, that even long after the prayer and the Bible decisions of the Supreme Court, a substantial number of teachers continued to pray, depending on the region. It is official policy in some places, or unofficial official policy.

Q Can we move from the elementary level to the junior high school level? Would you comment on the dynamics in that classroom—

A Yes.

Q —with respect to the prayer or moment of silence?

A Yes. There the issue shifts from the teacher to what the peers do. Junior high school students especially, probably much more than even senior high students, are very succeptible to what their peers are doing and what the significant peer group is doing, the clique that has the most prestige or power.

To the extent that you are in a region which that group is predominated by students who believe in prayer and use that time for prayer, the other students are going to feel, if not influenced to pray, at least coerced or (p. 105) threatened, put in an awkward position; caught between wanting to be part of the crowd and their own convictions.

MR. ALTMAN: May I have just one moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. ALTMAN: I have nothing further.

MR. ROBERTSON: Judge, may we take our lunch break at this time and come back a few minutes early? But before we do, I would ask Dr. Kuriloff the same questions I asked the other witness; if there is any material in the courtroom that he has of the 612 nature, perhaps he can give it to me during lunch and we can save some time.

THE WITNESS: I only brought some of it. I have all the testimony in the New Mexico case. I didn't bring it, but I have the brief.

THE COURT: Why don't you get together and exchange documents.

We'll recess at this time and resume at a quarter of two.

MR. ROBERTSON: Thank you, Judge.

THE COURT: Good.

(Luncheon recess.)

* * *

(p. 118) DIRECT EXAMINATION, FURTHER

BY MR. ALTMAN:

Q Doctor, earlier in your testimony you stated that you thought that the implementation, the Moment of Silence would create a disciplinary nightmare, quote, unquote.

Can you tell us what you meant by that?

A Yes.

May I have a copy of the law, please?

(Exhibit handed to the witness by Mr. Robertson.)

A Thank you.

If you read this Act very closely, it becomes very clear that it is ambiguous. Taking it on its face, it says it allows students in public schools to participate in one minute of silence before the opening of the school day.

It is not clear that students have to do that. It allows them to.

Second of all, once you read through, on line 2 it says, "This state shall permit students to observe one minute of silence to be used solely at the discretion of the individual student."

It dawned on me as I was thinking about this that in schools where there are problems with substantial number of students who engage in misconduct, especially junior high where you have always a number of school house lawyers among students, that a student who wanted to misuse this, it is an (p. 119) open invitation to misuse it.

For example, what happens when a student decides he wants to stand on his head in the silent moment of prayer? What happens when somebody decides they don't want to be silent?

After reading this, it is certainly arguable that if I don't want to be silent, I can talk or write or do something else.

So then you have a situation where the teacher is in a position of enforcing a very unclear regulation or rule. I think that puts a teacher in an administrative straight jacket.

You have room for people who want to be silent, and a room for people who don't want to be silent.

So I can foresee in some schools, some classrooms, this could be misused badly.

Q I take it then it leaves to the discretion of the teacher how the moment of silence is going to be conducted, and, therefore, you would have this wider range of uses of the moment of silence as you have various opinions among teachers?

A. Yes. And teachers will respond to specific students in specific context and specific communities.

The demands made on him or her in those context will vary widely from class to class, I might say, where you have tracking—one track that contains disruptive students.

(p. 120) Q How would the diversity of communities impact—the diversity of communities, regions, et cetera, impact on the use of the moment of silence as an opportunity for prayer?

A Well, it's very clear from the literature that compliance with the ban on prayer and the Bible varies greatly from region to region, across states and within states.

In those regions where there is a substantial amount of population who supported prayer in defiance of the Supreme Court rulings, the pressure among, especially junior high schools and high school students to pray, would be very serious, especially if that group were predominant and viewed as the lead or the special group in town.

MR ALTMAN: I have nothing further.

THE COURT: All right Cross-examine.

CROSS-EXAMINATION

BY MR. ROBERTSON:

Q Doctor, the last question that Mr. Altman just asked you, what literature are you referring to?

A There were several surveys that were conducted after the Supreme Court rulings, in the years following the Supreme Court rulings. I can give you specific citation.

Q Would you, please?

A Yes. There is a nice summary of the surveys in a book called The School Prayer Decisions: From Court Policy To Local Practice, by Dolbeare.

(p. 121) Q Just a little slower. School Prayer Decisions?

A Colon, From Court Policy To Local Practice, by Kenneth D-o-l-b-e-a-r-e, and Hammond, H-a-m-m-o-n-d, P.E., University of Chicago Press, 1971.

The exact sites are 29 and 33. They review the survey literature on compliance with the original prayer and Bible reading.

Q Anything in the last ten years?

A I'm looking through my dates here.

Q Yes, please, take your time.

A I think that's the latest thing that looked exactly at that particular question that I know of.

Q Is there any studies that you're aware of that would validate that data down to 1982?

A No. The only study—the interest in those laws, in those court decisions, of course, peaked in the late '60s. So by the early '70s people weren't studying that any more that I know of. I've done a literature research review of that and that's the latest I could find.

Q You anticipated my question.

A Yes.

Q You've done the literature review to determine whether there has been any further examination of this phenomenon?

A Yes. I was not able to turn anything up past those dates.

(p. 122) There are gallup surveys and things like that that show that 81 percent of the people support prayer in the schools, for example. But that's not exactly the same thing.

Q That's correct. We are focusing on those errant teachers and students who are praying despite the Supreme Court.

A Right.

Q Is there anything that validates the data for New Jersey in 1982?

A No.

Q In the study that you referred to that's dated in 1971, I assume that's the publication. To what period of time did that material relate?

A Those compared—that particular—well, there is a set of surveys that are cited in that book. The surveys, the most interesting ones compare '62 with '64 and '5. In other words pre-decision and post-decision.

Q Is there any material in that summary that you have reviewed pertaining to New Jersey?

A No. It is national. It goes by—New Jersey is included. So, yes, but not specifically New Jersey. It goes by region.

Q Is there any data in there which indicates what the situation was in New Jersey?

A Only in terms of belonging to the eastern region.

(p. 123) Q What about the eastern region?

A The Eastern Region, pre-1962, 83 percent of the teachers reported conducting prayer or—prayer, this is the prayer date. There is also a Bible date. 83 percent reported conducting some kind of prayer ceremony prior to '62. After '62, 11 percent.

Q How did that compare to the other regions of the country?

A Well, it is quite interesting. In the West, prior to the decision, there were 14 percent and it's dropped to five percent. So in the West they weren't doing much praying compared to the East.

In the Midwest, it was 38 percent and it dropped to 21 percent. And in the South it was 87 percent and it dropped to 64 percent.

Now, what I know about religious practice and the relationship to region and section and community is that

that will vary within the state. So that in some places in the state there will be a high percentage and in other parts of the state there will be a very low percentage.

Q What was included in the Eastern Region? You indicated New Jersey was. Can you give us the other—

A I'm sorry, I can't tell you exactly which. I assume it is the Eastern Seaboard States and New England.

Q And that data stops in about 1964?

(p. 124) A '64 or '5 school year.

Q Now, Doctor, the Act in question, Intervenor-Defendants Exhibit Number 9. In describing that Act just a few minutes ago you used the word "allow." Does the Act use that word?

A Yes.

Q And where is that?

A "An Act to allow students."

Q The title of the Act?

A I assume that's part of the Act.

Q What does the substantive portion of the Act state?

A Hopefully the title has relevance to what follows.

The Act itself says, "Principals and teachers in each public elementary and secondary school of each school district in this state shall permit students to observe a one minue period of silence to be used solely at the discretion of the individual student before the opening of exercises of

each school day to be used for private contemplation or introspection."

Q Do you interpret the words "shall permit" as mandatory or discretionary?

A Well, I interpret it as discretionary.

Q Does the Act require that teachers participate?

A No, it doesn't. It's not clear who it requires.

Q Doctor, you were present and you've heard Denice Fishburne testify about her reaction to taking the oath.

(p. 125) Do you think her reaction was an appropriate reaction for a child of her age?

A That she took it seriously?

Q Yes.

A Yes. It is one of several reactions that one might expect.

Q Doctor, before the luncheon recess I asked you to produce material that had been provided to you by counsel. Can you hand—produce that material?

A Well, what I brought with me. I can't produce the pile.

Q That's correct.

A Yes. I removed this from the the pile. This I removed from the deposition of Thompson. You have my private notes on it.

I have the brief and a piece of the deposition of Dr. Thompson in New Mexico, and I think the law.

MR. ROBERTSON: Judge, may we just take a second?

THE COURT: Yes, sure.

(Pause.)

* * *

(p. 128) A Well, let me distinguish between technical validity and face validity, all right?

Q Please, Doctor.

A The study as a whole leaves much to be desired. It has serious flaws that I can't judge because it doesn't tell me enough to be able to judge it.

What I rely on is the report of the kinds of things that 26 percent—his summary of the kinds of things that 26 percent of the students would not like the moment of silence reported.

There are problems with that because that's his summary. We don't know what else they might have said.

So I couldn't say that this is a reliable, consistent report of what the universal things those students said to him.

Assuming that it is, it describes a state of anxiety. And he summarized it. He did the study.

Q And as to the other reports and summaries of students who liked the moment of silence, would you accept those as being his summaries, subject to the same caveat?

A Yes, absolutely.

Q Do you know of any other study done by a clinical psychologist such as Dr. Thompson as to the reactions to the moment of silence?

(p. 129) A No.

Q Did Dr. Thompson find that it was used for prayer?

A He reports that two percent of the students used it for prayer. Now, what we can't tell is what age those students were.

One of the things he doesn't do that throws this study into question is he doesn't, what we call, block the study.

In other words, one thing you have to do when you're doing a survey or any kind of research is you want to make sure that you sample the population, the groups within the population that you care about.

For instance, we don't know if he—he did a random sample, but any random sample could miss junior high kids altogether. It shouldn't, but it could, it could miss the religious ends of town.

We don't know that. We don't know if he blocked for ethnic background. He seems not to. He did a straight random sample.

So I'm uncomfortable with interpreting the findings fully.

Q Did you read Dr. Thompson's deposition?

A Yes.

Q Was that issue explored?

A The question of the sampling was explored, but not the (p. 130) question of its inadequacy.

Q What is the term used in random sampling that you are describing?

A Blocking? Blocking is an attempt to avoid making key mistakes in polling or sampling.

For example, in the election of '48, as I understand it—I think I've got the right election—they used a phone survey and they excluded all the people who had the phones—who didn't have phones. So they left out a key poor element of the population. You don't want to do that.

In this case we want to make sure the sampling accounted for any Jews in town, any Protestants in town, made sure that it got—made sure that it reached a key religious group and any section that was very upper middle class and tended to be liberal.

Q Now, also provided to you was a copy of the Act, copy of plaintiff's brief with Mr. Cantor of counsel, and a two-page typewritten document entitled, "Professor Adam Strupski, testimonial outline."

A And I received that a few minutes before I testified.

Q Have you incorporated Professor Strupski's proposed testimony in your testimony on direct?

A Did I?

Q Yes, sir.

A Well, I had read it just before I came in. I don't (p. 131) know if I—I don't know if I incorporated it.

Q Then I will not ask you a question about it.

Doctor, I would like you to describe in detail the Court your comments with regard to junior high school students, and I think the word you used was they have an enormous agenda. I think this was in the context of your describing what you considered to be negative aspects of the moment of silence, is that correct?

A Potentially, yes.

Q Could you explain to Judge Debevoise what you mean by junior high school students having an enormous agenda?

A Well, junior high students are preoccupied with a variety of social concerns. They are starting to just be independent of their parents. They are very much concerned with how they look in the eyes of their peers. They are very much concerned with awakening sexuality. They are very much concerned with their status among their peers, their popularity, those kinds of things. Those things tend to preoccupy them quite a bit.

Q Is it your opinion that this moment of silence, as to those students that you have described, will only exaggerate the concentration on that agenda as opposed to concentration on the seriousness of school?

A Well, it will tend to allow students to think about what they are thinking about. If the main clique in the (p. 132) school is concerned with its power over territory,

they will think about that. If the main clique in the school is concerned about religion, they will think about that.

So it depends very much on what they are thinking about. In a situation where you have a strong Christian club in a strong Christian community, prayer might be one of the things that they use that for.

Q How would you, as a clinical psychologist, determine accurately, scientifically what they are thinking about?

A You can ask them.

Q Such as Dr. Thompson did in his study?

MR. ALTMAN: I object to Dr. Thompson's study because we are indirectly trying to introduce a study that is not in evidence, and which the witness has not said that he relied upon in reaching his opinions.

All he cited from there was one statistic.

THE COURT: That's all right. He said even if he didn't mention it, it would be a legitimate question. I'll overrule the objection.

MR. ROBERTSON: Obviously mine is based on the fact that he didn't read it. I'm not asking him to validate it. I just asked such as.

THE COURT: Yes. We are just getting into the agenda. That's an illustration of what it might be.

Q Subject to the questions that you had before, I'm just (p. 133). saying that a clinical psychologist—

A Or a counseling psychologist in my case.

Q —or a counseling psychologist in your case would conduct a study.

A Yes.

Q Okay. Have you—

A Let me add that I would do some things differently, though. I would make sure I knew who was responding to me and that I could identify them.

The problem in that case is I can't tell you what Thompson says about junior high kids because he doesn't distinguish them from elementary kids or high school kids. That's a serious flaw.

Q Doctor, just define how you would go about it very quickly, brief. Just how would you go about it?

A I would determine the questions first. The major problem with this study is that it is not clear what he's trying to find out. If he's trying to find out how many students are using that for prayer, he hasn't gone about it right because the questions don't bear centrally on that issue.

He only asked one question about what they are doing in the moment of silence. The rest of it is about all kinds of other things. I would be much more specific about what I wanted to know and then I would make sure that I (p. 138) include the knowledge of the discipline of sociology?

A It never hurts, but what I would—where I answer this question from is knowledge of school, knowledge of transactions in schools, knowledge of curriculum and knowledge of psychology. That, I think, makes me able to answer these questions without having the data in terms of knowledgeable prediction about the likely consequence.

Q And what is your prediction about the likely consequences of the moment of silence?

A I think that for younger children in elementary school, especially in the first three grades, it's likely to cause substantial amount of anxiety, unless the teacher comes in and structures it, and then the question would be how she—it is likely to be a she—structures it.

To the extent she uses it for religious purposes, I think that the consequence would be to induce students to follow her practice.

At the junior high level, I think that the consequences are much more likely to invite disruption on the part of students and to require a students, a teacher, to intervene in ways that I find interesting to imagine.

At the senior high level and at the junior high level, both, I think the consequences are to invite the stronger groups in the—among the students to influence the weaker students in directions that they wish, whether that be (p. 139) religion, construction or constructive use. That would depend on the regional setting.

Q Do you have any data from both groups upon which you can give us some idea in the younger age groups how many teachers were used for religious purposes, and in the older age groups how many dominant religious groups there are—

A Can I do it one at a time?

Q That's fine, but I'll give you both. I was going to say, free and roaming in the state of New Jersey.

A Free and roaming.

Q I was being facetious, Doctor.

A The first part of the question is how many teachers are likely to use it. And I have only data from—I don't

have data from New Jersey. There are two studies. One is in Oklahoma and one—that I have been able to find, and one is in Michigan.

In Michigan two percent of the teachers actually conducted prayers, and that percentage changed dramatically depending on whether it was rural teachers or urban teachers. Rural teachers tended to use more prayer and the urban teachers less.

The other study that bears on this is in Oklahoma. And in Oklahoma—and this is—these studies are both '70 and '71. I can give you the exact cite afterwards.

In Oklahoma they surveyed principals. Well over (p. 140) 50 percent of the principals believed that the Supreme Court was wrong, and that schools should have prayer, should sponsor prayer activities and Bible. And 30 percent of the elementary teachers and 40—principals, and 40 percent of the secondary principals said that, in fact, that was going on in their schools after the decision.

Would you like the exact cites?

Q I would, Doctor, but I'll get them afterwards, unless the Judge wants them at this point.

THE COURT: What's that?

MR. ROBERTSON: The exact cites for the data.

THE COURT: I don't need them, no.

Q And the date of that material?

A Those are both around '70, '71. I can give you that.

Q Okay. There is no data available for New Jersey?

A Not that I know of.

Q So based on your discipline as a consultant psychologist, could you give us a quantification on how many teachers in New Jersey will use this moment of silence for prayer?

A Well, I have no idea, no way of knowing. My guess would be that there would be over five percent.

Q That's a guess?

A That's a guess. I couldn't tell you exactly.

Q Thank you.

(p. 141) A I would say a small but important amount.

Q Based on your experience as a consulting psychologist, if teachers were told that they shouldn't do that with this moment of silence, do you think that they would comply?

A Well, that's a regional question. We know that they don't comply when they don't agree to some extent.

The dynamics have that, which have been spelled out in a lovely book called The Dynamics of Compliance: What Affects the Leadership in the School and the Leadership in the Community."

If it is leadership in the community and the schools support the group or decides to go along with the rule, then the teachers will go along, too. They will comply.

In those areas where the local leadership does not support it, they don't comply.

Q You talked about older children, dominant groups. What type of data would you need in order to make a

reasonable, professional prediction as to who would dominate or what would dominate?

A Well, you need to know—you can make some general—I can say generally what the classification—what the categories would be. Students who are from upper class or upper middle class economic background tend to be more influential. Students who are successful in school tend to be more influential. Students who are good looking tend to be (p. 142) more influential. Students who have some strong skill, athletic ability, tend to be influential. That varies from community to community.

All schools have these sets, all schools. They can be divided up. You hear them talk about the research, you hear them talk about it in terms of the—I don't know, there are a whole set of new terms. The students would be able to tell you very fast. Any student in junior high school can tell you what they are very quickly. You wouldn't have to go very far.

You have to explore who belonged to tell what the characteristics were that dominate.

Q To summarize your answer—and if you disagree, please state so—there would have to be some clinical investigation to determine what the dominant theme was of these groups.

A There would have to be an empirical investigation.

Q Empirical. And has there been such in the state of New Jersey?

A Well, that's a very broad question. I'm sure there are studies about schools.

Q Let me ask you this question: Are you aware of any?

A No.

Q Doctor, you have testified that in your professional opinion, the moment of silence will have minimal value at best and it will be harmful at worse.

(p. 143) A Bad education and bad religion.

Q I think I've heard that phrase before. What is the minimal value that you can foresee for the moment of silence?

A I think I used the word "marginal."

Q Marginal value?

A And I make that distinction because I didn't mean that there was some low level value that was there. I meant that if there were a value, it was very far to the edge of what one would consider important.

Q And what is it?

A Well, under the best of circumstances it might allow —I have to think about it for a minute. It is not so easy to find a good value for it.

Under the best of circumstances I think that it might allow some people to center, to focus in on their own concerns so that they can get ready. You understand the best of circumstances.

Q Would you explain that a little bit more so I understand it? You understand the best of circumstances it might allow—

A Allow some students to think through what was on their mind a little bit more before they started school.

Q What value would that have for students?

A Well, you're asking me to testify on the other side of this.

(p. 144) It might have some value. It's possible if it had value. I wouldn't advocate that it would have value.

I think it could have value if it were structured better and teachers explained the purpose of it and it had a curriculum. Then it could be very valuable.

Q What type of curriculum would you recommend?

A Well, you need to remember that the—my view of the problem with the minute of silence is that it is essentially unstructured, an open sack.

For contemplation and meditation to be useful in the classroom, first of all, you have to help students understand how the thing—how to deal with all the ruminations going on in their head. People come in and they are abuzz. That happens to us, too.

There are techniques for helping them work through that and become more focused on the present and more focused on the curricular objects. The curricular object might be relaxation.

There is substantial studies that show that meditation, which started as a religious practice, can have significant effect on tension reduction and lowering of blood pressure and things like that if it is done—it takes a lot of work. You have to practice. It takes 20 minutes twice a day, and it takes somebody who knows how to do it to teach you how to do it. So it can just do that.

(p. 145) But it does have a curricular impact. For example, in the Philadelphia public schools, out of there effect of education project, have used centering, what they call centering, but it's really helping students relax and focus and observe or contemplate a specific thing, like Julius Caeser's speech, or like a description of a battle. Or I actually read one in the Philadelphia public schools.

It enables a student to imagine what is there and what isn't there in the story.

For example, what did Isaac feel if he was going up the mountain with his father? That comes right out of a piece of their curriculum that I found last spring. Or how did Julius—how did Marc Antony feel when he's making this speech?

You can do it, help students think through more complex ideas. In that sense it can be very good. But you have to have an idea what you're going to do, the purpose of it, the substance of it, to what end you're working, and you have to let the students understand that and you have to let them give you feedback about their experience of it.

Students can be self-reflective. It is important to allow them to interact with you about it.

Q And they can be this without really getting involved in any kind of religious activity?

A Well, certainly. They can do all kinds of things (p. 146) without being involved in religious activities.

Q Is it fair to say your opinion or the criticism is the Act standing alone without the framework of a curriculum you don't think would be useful?

A And might be detrimental, right.

Q Because it routinizes the use of quiet, just quiet, and depreciates its use by the teacher at other times during—

A As a disciplinary instrument, it removes the discretion of the teacher, and once the instrument—but it is also negative because for younger kids it can make them anxious, and I think there is evidence of that.

Silence is a very powerful social experience. If you think about the words that silence is connected with, we have unearthly silences, deathly silences, awesome silences, religious silences.

And if you have a silence—what are people's association with silence? We have a moment of silence and somebody dies. And in the context of that powerful experience, it opens people to both inner influence and external influence.

That's why I don't like it, because it isn't controlled by the teacher or the educational authority.

Q And, indeed, may be used, based on your experience, just really influenced into the classroom, and talking about the junior high school students, a whole bunch of trivialities (p. 147) that they may have on their minds that don't relate to the educational experience?

A It could do that, or it would influence into the experience of a prayer, if that's what was on the mind of the key group in that school.

Q Doctor, do you believe that it is necessary to establish a boundary between school and nonschool?

A Yes.

Q And how has that been done traditionally?

A Well, traditionally, through opening exercises of one sort or another.

What I like about those is that they have a public content, and that they involve direct, collective activity that focuses students from their private experience to a public, appropriate educational forum.

Q And gives them a sense of community with each other.

A Absolutely.

Q A collective undertaking?

A Yes.

Q Could the moment of silence serve that role?

A Well, I don't think it serves it at all well. The reason for that is because—because it's contentless, it tends to further whatever mental activities a student has when he or she comes into the classroom.

And as a consequence, it tends to keep students (p. 148) in their own fantasies, their own thoughts, their own concerns and not—it doesn't demark the transition.

That's also a poor ritual in my opinion.

MR. ROBERTSON: Thank you, Doctor. No further questions.

THE COURT: Any redirect?

MR. ALTMAN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ALTMAN:

Q Dr. Kuriloff, Mr. Robertson questioned you about studies as to the impact of the Supreme Court ban on prayer or other religious activity in the school and what the study showed with regard to compliance after. I think you responded with regard to a study that was done in the '64, '65 period.

A Right. The surveys were done then.

Q And then you were asked if you could predict or quantify the number of students that you thought might—

A Teachers.

Q —teachers, that might pray as a result of the—strike that.

* * *

(p. 150) Q In essence, I asked you if the public perception of the Moment of Silence is an effort to reintroduce prayers in the schools, do you think that perception will result in teachers being more likely to pray?

A Absolutely. I think the evidence is indisputable that people derive support for their beliefs when it goes with their beliefs from a legitimate body like the legislature. I think it would increase it.

Q When Mr. Robertson was asking you about what you would ideally like to see in a study in order to determine how many people are going to pray as the result of a moment of silence, do you think that you're going to get a reliable result for, say, New Jersey, if you select Las Cruces, New Mexico as your town to conduct the survey in?

A I don't think that—if you distinguish between reliable and valid, I doubt that it would be generalizable to New Jersey, from what I know about New Mexico.

My guess is it is a highly Catholic population in Las Cruces. I'm not positive. My guess is that you have a high Hispanic, high Catholic population. I think that would be very different than the variety you find in New Jersey.

Q The fact is that how it's going to be utilized will depend upon what the major beliefs are of the people in the (p. 151) area utilizing this?

A Yes. That's why it's very important to make sure you get representative groups, all the key groups included in the studies.

Q We have areas in the state that are more—can be said as to be more religious, more fundamental than other areas, correct?

A Right.

Q And, therefore, we might find a variation in the utilization of moment of silence from one area of New Jersey to the other?

A To the extent that's true, I'm sure it would be true. To the extent it's true, there are differences which I think

is safe. It would be major differences in compliance and use.

MR. ROBERTSON: Judge, I don't want my silence to be taken as an indication of agreement with what has just gone on here. I'm not aware of any evidence in this case that would validate Mr. Altman's assumption in the question that there are areas in the state where there are certain identifiable groups.

THE COURT: I think it was on the hypothetical basis, if there were.

MR. ROBERTSON: Shall we couch it that way so I'm not deemed—

THE COURT: I'm understanding it that way.

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